

## PART III: THE OATH POWERS AND DUTIES OF GRAND JURORS

### Oaths

"The oath of a grand jurymen," says Judge Wilson,<sup>1</sup> "is the commission under which he acts." This statement, while undoubtedly a correct exposition of the law as then understood, is in our modern jurisprudence not sufficiently comprehensive, and is subject to the qualification that, coupled with additional statutory powers, and duties within the bounds prescribed by statutes or as defined by the courts, it forms his commission.

### Foreman

The oath as administered to the foreman of the grand jury<sup>1\*</sup> is generally in the following language:

"You, as foreman of this inquest, for the body of the County of \_\_\_\_\_, do swear, {95} (or affirm) that you will diligently inquire, and true presentment make, of such articles, matters, and things as shall be given you in charge or otherwise come to your knowledge, touching the present service; the commonwealth's counsel, {96} your fellows' and your own you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave any one unrepresented for fear, favor or affection, hope of reward or gain, but shall present all things truly as they come {97} to your knowledge, according to the best of your understanding (so help you God.)"

### Remaining Jurors

This oath the balance of the grand jurors pledge themselves to observe in these words:

"The same oath (or affirmation) which your foreman hath taken, on his part, you and every of {98} you, shall well and truly observe, on your part (so help you God)."

### History

The grand juror's oath is of great antiquity. When in the time of Ethelred II the twelve Thanes went out, they "swore upon the relic that was given them in hand that they would accuse no innocent man nor conceal any guilty one."<sup>2</sup> In Bracton's time the oath and pledge bound the grand jurors to {99} similar action.<sup>3</sup> But while the powers of the grand jury were much broader than they are today, the oath of the grand juror was narrower in its scope. "I will speak the truth concerning this *which ye shall ask me*,"<sup>4</sup> the grand juror swore, and if the oath was his commission, then the limits of his powers were denned by those things concerning

which the king's justice should ask. The oath proper, as usually referred to, in no wise resembles the present day oath, but at the conclusion of the reading of the capitula by the justices as to which the grand jurors had sworn to speak the truth, they pledged themselves to do faithfully those things which the justices required of them, to aggrieve no one through enmity, nor defer to any one through love, and to conceal what they had heard.<sup>5</sup> This was undoubtedly, in the nature of a supplemental oath and contains the elements of the oath of the present day.

In the time of Britton<sup>6</sup> but one oath was taken, containing all the elements of the two oaths taken in Bracton's time, and more generally conforming to the oath now administered. In a book printed in the time of Oliver Cromwell,<sup>7</sup> the oath taken by the foreman of the grand jury is given as follows: "Ye shall truly inquire, and due presentment make of all such things as you are charged withall on the Queen's behalf, the Queen's counsell, your owne, and your fellowes, you shall well and truly keepe; and in all other things the truth present, so help you God, and by the contents of this Booke."

It will be noted that this oath, like the one taken by the grand jurors in Bracton's time, places a limitation upon the power of the grand jury. They are charged to present "all such things as you are charged withall on the Queen's behalf," so that if their oath be regarded as their commission and denning the bounds within which they could lawfully act, they were prevented from making presentment of anything with which they had not been charged. But in practice no such {100} restriction was placed upon them. They were regarded as an arm of the government to bring wrong-doers to justice, and in this respect they exercised the broadest and most unlimited powers.

The view was taken in the early history of the Federal courts that grand juries, on their own motion, institute all proceedings whatsoever.<sup>8</sup> This view received strong support from Judge Wilson,<sup>9</sup> at that time one of the justices of the United States Supreme Court, who remarks that the grand jurors' oath "assigns no limits, except those marked by diligence itself, to the course of his inquiries: why, then, should it be circumscribed by more contracted boundaries? Shall diligent inquiry be enjoined? And shall the means and opportunities of inquiry be prohibited or restrained?"

The same broad view of the right of the grand jury to act was taken by Mr. Bradford, Attorney General of the United States in 1794, in a letter to the secretary of state.<sup>10</sup> In this he recognized the right of a prosecutor to personally appear before the grand jury with his witnesses and make his complaint directly to them without the necessity of it passing through any intermediate tribunal.<sup>11</sup> This, however, is not now the law in the Federal courts.<sup>12</sup>

{101} In Pennsylvania, a somewhat narrower view of the power of the grand jury was taken. Judge Addison in his very learned charges to grand juries says: "The matters which, whether given in charge or of their own knowledge, are to be presented by the grand jury, are all offences within the county. To grand juries is committed the preservation of the peace of the county, the care of bringing to light for examination, trial and punishment, all violence, outrage, indecency and terror, everything that may occasion danger, disturbance or dismay to the citizens. Grand juries are watchmen, stationed by the laws to survey the conduct of their fellow-citizens, and inquire where and by whom public authority has been violated, or our constitution or laws infringed." But the grand jury is not to summon witnesses except under the supervision of the court.<sup>13</sup> This effectually limits them to such matters as are within their own knowledge or may be given them in charge by the court or by the district attorney.

### Diligent Inquiries and True Presentments

The first duty imposed upon the grand jurors by their oath is that they will "diligently inquire and true presentment make." Judge Addison, in his charge to the grand jury at September Sessions, 1792, said,

"the accurate interpretation, in its true extent, of the diligent inquiry and true presentment which the grand jury is sworn to make, has not been precisely agreed on by learned men."<sup>14</sup>

Four years earlier, however, these words had received a judicial interpretation in Pennsylvania,<sup>15</sup> in a case pending before the grand jury. A grand juror asked what was meant by the words "diligently inquire," to which Chief Justice McKean replied,

"The expression meant, diligently to inquire into the circumstances of the charge, the credibility of the witnesses who support it, and from the {102} whole, to judge whether the person accused ought to be put upon his trial. For (he added) though it would be improper to determine the merits of the cause, it is incumbent upon the grand jury to satisfy their minds, by a *diligent inquiry*, that there is a probable ground for the accusation, before they give it their authority, and call upon the defendant to make a public defense."

In his charge to the grand jury in the Circuit Court for the District of Maryland in 1836, Chief Justice Taney, of the United States Supreme Court, said,<sup>16</sup>

"But in our desire to bring the guilty to punishment, we must still take care to guard the innocent from injury; and every one is deemed to be innocent until the contrary appears by sufficient legal proof. You will, therefore, in every case that may come before you, carefully weigh the testimony, and present no one, unless in your deliberate judgment, the evidence before you is

sufficient in the absence of any other proof, to justify the conviction of the party accused."

The difference in the extent of the powers of grand jurors in the Federal courts and in the courts of Pennsylvania and other states is reflected in the wider range which the Federal judges give to this clause of the oath. The construction placed upon these words in the Federal courts is probably most fully and clearly expressed by Chief Justice Chase<sup>17</sup> in the following language:

"You must not be satisfied by acting upon such cases only as may be brought before you by the district attorney, or by members of your body to whom knowledge of particular offences may have come. Your authority and your duty go much further. You may and you should, summon before you, officers of the government, and others whom you may have reason to believe possess information proper for your action, and examine them fully."

But in making diligent inquiry neither the Federal nor the state grand jury is wholly unrestrained. They may only inquire and present within the extent of their powers as will be {103} hereafter treated of,<sup>18</sup> and according to the well established principles of law. A grand jury may only inquire into offences occurring within its territorial jurisdiction,<sup>19</sup> and not barred by the statute of limitations;<sup>20</sup> but within such jurisdiction they may investigate into every crime known to the law,<sup>21</sup> and which comes before them in one of the methods provided by law. They may investigate a crime committed after they are empaneled.<sup>22</sup>

In making their inquiries, the grand jurors are not permitted to summon witnesses for the defence either upon their own motion<sup>23</sup> or at the request of the defendant or his counsel,<sup>24</sup> nor will the court allow the defendant's witnesses to go before the grand jury,<sup>25</sup> either with or without the consent of the district attorney;<sup>26</sup> nor may any witnesses appear before or send any communication to them, pertaining to a matter then pending before the grand jury, except upon the previous order of the court.<sup>27</sup> In Connecticut, the extraordinary method is in force of allowing the defendant to be present during the examination of witnesses before the grand jury,<sup>28</sup> but his counsel will not be admitted to their deliberations.<sup>29</sup>

If the grand jurors are not satisfied with the evidence {104} presented by such witnesses as they have heard, they may ask that additional testimony be submitted to them.<sup>30</sup> This request should be made to the court, who has the sole power of ordering that process issue to produce any additional evidence before the grand jury;<sup>31</sup> but in the United States courts it is sufficient if application be made to the district attorney, who may direct that process issue.<sup>32</sup> Ordinarily the grand jury cannot on their own motion summon witnesses to appear before them,<sup>33</sup> for they usually have neither the right to issue the necessary process to command their attendance nor the power to punish if witnesses refuse to appear.

In Tennessee the grand jury is vested by statute with broad inquisitorial powers in certain cases, and in such instances they may send for witnesses without an order of court.<sup>34</sup>

In Missouri<sup>35</sup> and Maryland<sup>36</sup> a grand jury is vested with similar authority. But the powers conferred on grand juries by such statutes being in derogation of the common law, cannot be extended beyond the express provisions of the statute itself.<sup>37</sup>

{105} When they have heard all the evidence which can be produced, they are then prepared to make their presentment. It was formerly thought in England that the grand jury should present "in case there be probable evidence,"<sup>38</sup> but this rule is now altered.<sup>39</sup> In the Federal courts<sup>40</sup> the rule there prevailing is thus stated by Mr. Justice Field,<sup>41</sup>

"To justify the finding of an indictment the grand jury must believe that the accused is guilty. They should be convinced that the evidence before them, unexplained and uncontradicted, would warrant a conviction by a petit jury."<sup>42</sup>

This is now the law in Pennsylvania,<sup>43</sup> although formerly the English rule obtained.<sup>44</sup> The same rule is recognized in New York,<sup>45</sup> Massachusetts<sup>46</sup> and Virginia,<sup>47</sup> and has been adopted in California by statute.<sup>48</sup>

### Restrictions on Powers

In making diligent inquiry and true presentment, the grand jury is restricted to "*such articles, matters and things as shall be given you in charge or otherwise come to your knowledge, touching the present service.*"<sup>49</sup> This clause of the oath is the {106} grant of power to the grand jury, but the extent of the powers under this grant have not received a like construction in the various jurisdictions. It has been the tendency in Pennsylvania<sup>50</sup> to restrict this power within the narrowest lines, while the Federal courts, like the English courts, permit a very wide exercise of it. The first view is set forth in a celebrated opinion rendered by Judge King<sup>51</sup> in 1845. After describing how the ordinary mode of instituting prosecutions is by arrest on a warrant based upon an affidavit, with a subsequent binding over of the defendant or holding him in bail to answer at court, and detailing the subsequent steps whereby a bill charging the offence is submitted by the district attorney to the grand jury, and which is either returned a true bill or ignored, he then describes the extraordinary modes of criminal procedure which may be pursued, in the following words:

"The first of these is, where criminal courts of their own motion call the attention of grand juries to and direct the investigation of matters of general public import, which, from their nature and operation in the entire community, justify such intervention. The action of the court on such occasions, rather bear on things than persons; the object being the suppression of general and public evils, affecting in their influence and operation communities rather than individuals and therefore,

more properly the subject of general than special complaint. Such as great riots that shake the social fabric, carrying terror and dismay among the citizens; general public nuisances affecting the public health and comfort; multiplied and flagrant vices tending to debauch and corrupt the public morals, and the like. In such cases the courts may properly in aid of inquiries directed by them, summon, swear, and send before the grand jury, such witnesses as they may deem necessary to a full investigation of the evils intimated, in order to enable the grand jury to present the offence and the offenders. But this course is never adopted in case of ordinary crimes, charged against individuals. Because it would involve, to a certain extent, the expression of opinion by {107} anticipation, on facts subsequently to come before the courts for direct judgment; and because such cases present none of those urgent necessities which authorize a departure from the ordinary course of justice. In directing any of these investigations, the court act under their official responsibilities, and must answer for any step taken, not justified by the proper exercise of a sound judicial discretion.

"Another instance of extraordinary proceedings, is where the attorney general ex-officio prefers an indictment before a grand jury, without a previous binding over or commitment of the accused. That this can be lawfully done is undoubted. And there are occasions where such an exercise of official authority would be just and necessary, such as where the accused has fled the justice of the state, and an indictment found, may be required previous to demanding him from a neighboring state, or where a less prompt mode of proceeding might lead to the escape of a public offender. In these, however, and in all other cases, where this extraordinary authority is exercised by an attorney general, the citizen affected by it is not without his guarantees. Besides, the intelligence, integrity, and independence, which always must be presumed to accompany high public trust, the accused unjustly grieved by such a procedure, has the official responsibility of the officer to look to. If an attorney general should employ oppressively, this high power, given to him only to be used when positive emergencies or the special nature of the case requires its exercise, he might be impeached and removed from office for such an abuse. The court, too, whose process and power is so misapplied, should certainly vindicate itself, by protecting the citizen. In practice, however, the law officer of the commonwealth always exercises this power cautiously; generally under the direction of the court, and never unless convinced that the general public good demands it.

"The third and last of the extraordinary modes of criminal procedure known to our penal code, is that which is originated by the presentment of a grand jury. A presentment, properly speaking, is

the notice taken by a grand jury of any offence from their own knowledge or observation, without a {108} bill of indictment being laid before them at the suit of the commonwealth. Like an indictment, however, it must be the act of the whole jury, not less than twelve concurring on it. It is, in fact, as much a criminal accusation as an indictment, except that it emanates from their own knowledge, and not from the public accuser, and except that it wants technical form. It is regarded as instructions for an indictment. That a grand jury may adopt such a course of procedure, without a previous preliminary hearing of the accused, is not to be questioned by this court."

The other view was expressed in an equally able manner by Mr. Justice Field<sup>52</sup> in 1872:

"Your oath requires you to diligently inquire and true presentment make, 'of such articles, matters and things as shall be given you in charge, or otherwise come to your knowledge touching the present service.'

"The first designation of subjects of inquiry are those which shall be given you in charge; this means those matters which shall be called to your attention by the court, or submitted to your consideration by the district attorney. The second designation of subjects of inquiry are those which shall otherwise come to your knowledge touching the present service; this means those matters within the sphere of and relating to your duties which shall come to your knowledge, other than those to which your attention has been called by the court or submitted to your consideration by the district attorney.

"But how come to your knowledge?

"Not by rumors and reports<sup>53</sup> but by knowledge acquired from the evidence before you, or from your own observations. Whilst you are inquiring as to one offence, another and different offence may be proved, or witnesses before you may, in testifying, commit the crime of perjury.

"Some of you, also, may have personal knowledge of the {109} commission of a public offence against the laws of the United States, or of facts which tend to show that such an offence has been committed, or possibly attempts may be made to influence corruptly or improperly your action as grand jurors. If you are personally possessed of such knowledge, you should disclose it to your associates; and if any attempts to influence your action corruptly or improperly are made, you should inform them of it also, and they will act upon the information thus communicated as if presented to them in the first instance by the district attorney.

"But unless knowledge is acquired in one of these ways, it cannot be considered as the basis for any action on your part.

"We, therefore, instruct you that your investigations are to be limited: —

"First. To such matters as may be called to your attention by the court: or

"Second. May be submitted to your consideration by the district attorney: or

"Third. May come to your knowledge in the course of your investigations into the matters brought before you, or from your own observations: or

"Fourth. May come to your knowledge from the disclosures of your associates.

"You will not allow private prosecutors to intrude themselves into your presence, and present accusations. Generally such parties are actuated by private enmity, and seek merely the gratification of their personal malice.

"If they possess any information justifying the accusation of the person against whom they complain, they should impart it to the district attorney, who will seldom fail to act in a proper case. But if the district attorney should refuse to act, they can make their complaint to a committing magistrate, before whom the matter can be investigated, and if sufficient evidence be produced of the commission of a public offence by the accused, he can be held to bail to answer to the action of the grand jury."

It will consequently be seen from the opinions of Judge King and Mr. Justice Field that the powers of the grand jury {110} in Pennsylvania and the Federal courts coincide in these particulars:

1. That they may present such matters as are given them in charge by the district attorney, by means of bills submitted to them based upon the return of the committing magistrate, or with the investigation of which they are specially charged by the court.<sup>54</sup>
2. That they may present such matters as are within the actual knowledge of one of the grand jurors, the facts of which are communicated by him to his fellow jurors.
3. That they may present where the district attorney, upon his official responsibility, submits a bill to the grand jury without a previous commitment or binding over, in cases where the defendant is a fugitive from justice, and when emergencies may require that he should act promptly.

But the Federal grand juries have the additional power of presenting such offences as come to their knowledge while they are investigating other matters, through the testimony of the witnesses appearing before them.<sup>55</sup> This method of procedure has been held to be unlawful by the Supreme Court of Pennsylvania.<sup>56</sup>

### **Bills of Indictment Profered by District Attorneys**

The right of the district attorney to prefer a bill of indictment to the grand jury upon his official responsibility and without leave of court is now firmly established both in the Federal courts<sup>57</sup> and in the courts of Pennsylvania,<sup>58</sup> but this {111} right has invariably been stoutly opposed by defendants, and the exercise of it may well be the subject of criticism in view of the very weak foundation upon which the decisions have been made to rest. The inherent weakness of it is perhaps best observed in the fact that the district attorney rarely exercises the right without first obtaining leave of court,<sup>59</sup> and those decisions which are most frequently quoted as sustaining the right invariably contain the proviso, "with leave of court."

Treating of the right of the attorney general to thus act upon his official responsibility without leave of court, Judge King says,<sup>60</sup> "that this can be lawfully done is undoubted," and his ability and learning make his opinion of great weight. But he cites no authority in support of the doctrine which he states so positively, and in the case of *Commonwealth v. English*,<sup>61</sup> Judge Pratt, while he cites and follows the doctrine thus laid down, admits that the opinion of Judge King upon this point may be considered *obiter dictum*. In the cases of *McCullough v. Commonwealth*,<sup>62</sup> and *Brown v. Commonwealth*,<sup>63</sup> while the right of the district attorney, with the leave of court, to send in bills of indictment to the grand jury without any prior prosecution has been distinctly affirmed, the right {112} of this officer to do so without leave of court is nowhere shown.

In the case of *Rowand v. Commonwealth*,<sup>64</sup> the assignments of error unfortunately failed to raise this point, and raised only questions which were then well settled. The grand jury in this case ignored the bill and the district attorney without leave of court sent a new bill to a subsequent grand jury, which returned a true bill. Judge White in his opinion in the court below upon a motion to quash the indictment said, "I doubt not the power of the court, on cause shown upon affidavit, to direct a bill to be sent back to be reconsidered by the same or a subsequent grand jury. But in the absence of such direction by the court, I doubt the legality, and very much condemn the practice of sending up the same bill (or one just like it, based on the same information) to a subsequent grand jury, after it has been ignored by one grand jury. Ordinarily an ignoramus should be the end of the case. If I were acting on my own judgment I would quash these, *but as I have been informed that the course pursued in these cases has been always sustained by this court, I shall conform to that practice and refuse these motions.*"

Mr. Justice Woodward, who delivered the opinion of the Supreme Court, said,

"But principles have been long settled which require that the action of the district attorney in these cases shall be sustained,"

and he rests this statement upon the dictum of Judge King. He further says,

"While, however, the possession of this exceptional power by prosecuting officers cannot be denied, its employment can only be justified by some pressing and adequate necessity. When exercised without such necessity, it is the duty of the Quarter Sessions to set the officer's act aside."

If, as the learned judge says, the possession of this exceptional power by prosecuting officers cannot be denied, then surely it must rest upon some clearly defined authority. But he relies upon a statement for which the author thereof, cites {113} no authority. This question not having been raised by the assignments of error, the opinion of the court upon this point must consequently be regarded as *obiter dictum*.

This question was directly involved in a case before Judge Pratt,<sup>65</sup> who states,

"After the most careful examination of the text books and reports, I have been able to find but few adjudicated cases on the subject, and no one case reported where this authority has been conceded to the attorney general or to the district attorney, without some qualification; only, perhaps in the case of *Brown v. Commonwealth*, 26 P. F. Smith, 319."

He, however, attempts to show that the powers now claimed for the district attorney are those which were formerly possessed by the attorney general and were the same as those which Blackstone states<sup>66</sup> were possessed by the attorney general for the crown.

An examination of the authority cited shows that the attorney general only exercised this authority by *informations* filed in the Court of King's Bench for "such enormous misdemeanors as peculiarly tend to disturb or endanger his government, or to molest or affront him in the regular discharge of his (the king's) royal functions."<sup>67</sup> But neither Blackstone nor any of the other English authorities concede the right of the attorney general, *ex-officio*, to lay before the grand jury an indictment. The right of the attorney general or the district attorney to exercise this power of proceeding by information is swept away by the Constitution of Pennsylvania, which provides that no information shall be filed for an indictable offence.<sup>68</sup>

That he may exercise the same power over indictments that at common law he exercised with regard to informations cannot be conceded, when by constitutional provisions he

can no longer exercise such power in filing informations and it never existed in connection with indictments and has not been extended to them by statute. In the absence of clear evidence of {114} this authority to so act, it would appear improper to permit the exercise of this high power except by leave of court.

In *Commonwealth v. Sheppard*,<sup>69</sup> Rice, P. J., said:

"In such cases, that is, where the indictment is sent up by the district attorney without first obtaining the leave of the court, the discretion of the court may be invoked, and is exercisable upon motion to quash. If the court refuses to quash, this, ordinarily, is equivalent to giving its sanction. If the court sustains the motion to quash, this is tantamount to refusing its approval of the action of the district attorney."

Where the district attorney first obtains leave of court to send a bill of indictment to the grand jury without previous arrest and binding over, the court will overrule a motion to quash the indictment.<sup>70</sup> When, however, the initial step in the prosecution is the laying of the district attorney's bill before the grand jury, it is necessary that it should possess some special earmark by which it is to be known as his official act other than merely affixing his signature thereto.<sup>71</sup>

The courts, having thus sustained the right of the district attorney to send a bill of indictment to the grand jury on his official responsibility alone, have had no hesitation in supporting the right of the district attorney to send to the grand jury indictments charging offences which were not included in the original informations made before the magistrate, and his right to so do may now be regarded as settled.<sup>72</sup>

{115} In the Federal courts a defendant may be proceeded against by information in cases where the offence is not "a capital or otherwise infamous crime,"<sup>73</sup> but it has been held that the right to file an information is not a prerogative of the prosecutor's office and the district attorney must first obtain leave of court.<sup>74</sup> The court may direct before granting leave that the accused be brought into court to show cause why the information should not be filed against him.<sup>75</sup> This right to proceed by information is in addition to the right to lay an indictment before the grand jury and may be and sometimes is used when the grand jury has ignored a bill.<sup>76</sup> The provisions of the United States Revised Statutes<sup>77</sup> authorizing the prosecution of certain offences either by indictment or by information do not preclude the prosecution by information of such other offences as may be so prosecuted without violating the constitution and United States statutes.<sup>78</sup>

In some of the states provision has likewise been made for the prosecution of offences other than capital or other infamous crimes by information, while in other states even capital crimes may be prosecuted by information.

## Grand Juries as Shields

In the exercise of their power, the grand jury has frequently acted as the defender of the liberty of the press in attempted prosecutions for libel; and have stood as a shield between courageous editors who have boldly endeavored to expose official wrong doing, and the persons who have been stung into action by the exposures thus made. Two instances, however, have occurred in Pennsylvania where the public press has made {116} sharp attacks upon the grand jury. The grand jurors made inquiry of the court as to what redress they had or what action could be taken. Judge Ludlow advised them that as an official body they had no redress and could take no action against the persons responsible for the publication.<sup>79</sup>

## Secrecy

The grand juror's oath enjoins upon him "the commonwealth's counsel, your fellows and your own you shall keep secret." We have seen how the pledge of secrecy was enjoined upon the grand jury in the time of Bracton, and how it became a part of their oath prior to the time of Britton. The purpose of enjoining secrecy upon the inquest has been a theme for much discussion and has produced many diverse views. Mr. Christian considers that its purpose was to prevent a defendant from contradicting the testimony produced before the grand jury by subornation of perjury;<sup>80</sup> while others hold that its purpose was to prevent the grand jurors from being overawed by the power and high connections of those whom they should present.<sup>81</sup> Both of these views are attacked vigorously by Mr. Bentham<sup>82</sup> and Mr. Ingersoll,<sup>83</sup> the latter of whom concedes the propriety of the secrecy in the time of Bracton that the offender might not escape, while contending that in the present day aspect of the institution it no longer has any purpose to serve and should be abolished.

While it would seem, without doubt, that its original purpose was that no offender should escape, it could not be insisted upon by the grand jurors as a matter of right. They were originally bound to disclose to the court the grounds upon which the inquest had acted and the part each juror had taken in it. When the right to deliberate and keep the manner in which each juror had voted secret, first became a prerogative of the grand jury, cannot be determined. In {117} Scarlet's case<sup>84</sup> we have what is perhaps the last recorded instance of the court being informed by the grand jurors how any matter had come to their knowledge. Subsequent to this, (we see the crown exercising its alleged right to compel the grand jury to hear the evidence in open court, although it did not attempt to deny them the right to deliberate in the privacy of their own room, nor when they refused to divulge why they had ignored a bill did the court take any steps to compel them to do so. And the last instance where the grand jury were even obliged to hear the evidence in public seems to have been in Lord Shaftesbury's case,<sup>85</sup> where the grand jury so stoutly asserted their right to hear the evidence only within their own room.

A very remarkable case, savoring of the methods pursued in England in Lord Shaftesbury's case arose in North Carolina<sup>86</sup> in 1872. One Joseph R. Branch was charged with having committed an affray and with assault on one, Spier Whitaker. The case was heard by the grand jury, the witnesses being Whitaker and one Hardy, and the grand jury offered to return the bill "not a true bill" which the court refused to receive. The court thereupon directed the grand jurors to be seated in the jury box and in open court examined the same witnesses before them. The judge then charged that if the testimony was believed, a true bill should be returned. The grand jury accordingly returned a true bill. The defendant moved to quash the indictment, which motion was refused and an appeal was then taken to the Supreme Court which reversed the ruling of the lower court. In his opinion Pearson, C. J., says:

"There is nothing in our law books, and no tradition of the profession to show that such has ever been the practice or the course of the courts in this state; and we are of opinion that the ruling of his honor is an innovation not warranted by the law of the land.

{118} "The power of the judge to require a grand jury to come into open court and have the witnesses for the state examined, is not only opposed to immemorial usage, but is not sustained either by principle or authority."

It was by reason of this requirement of secrecy that in England the view obtained that a grand juror not only could not be compelled to reveal in evidence what had transpired in the grand jury room, but under no circumstances would be allowed to voluntarily do so.<sup>87</sup> This doctrine, however, received its first test in a case mentioned by Mr. Christian,<sup>88</sup> where a member of a grand jury heard a witness testify before a petit jury contrary to what he had testified before the grand inquest. "He immediately communicated the circumstances to the judge, who upon consulting the judge in the other court, was of opinion that public justice in this case required that the evidence which the witness had given before the grand jury should be disclosed; and the witness was committed for perjury to be tried upon the testimony of the gentlemen of the grand jury."<sup>89</sup>

The same view was taken by Mr. Justice Huston in a Pennsylvania case.<sup>90</sup> "That part of the oath," he says, "as well as the whole of the proceeding, was intended to punish the guilty, without risk to those who, in performance of their duty, took a part in the proceeding; but it never was intended to punish the innocent or obstruct the course of justice."

The tendency is to permit grand jurors to testify where it will not be revealed how any member of the jury voted.<sup>91</sup>

{119} Thus it has been held that a grand juror may testify as to who was the prosecutor upon a certain bill of indictment;<sup>92</sup> that twelve jurors concurred in the finding;<sup>93</sup> that a witness had testified to a different state of facts when

before the grand jury;<sup>94</sup> that the presentment was made upon facts not within the personal knowledge of any of the grand jurors;<sup>95</sup> that for the protection of public or private rights, any person may disclose in evidence what transpired before a grand jury.<sup>96</sup>

In Iowa<sup>97</sup> affidavits of the grand jurors were received on motion to quash the indictment to show that the judge visited the grand jury during its deliberation and directed that an indictment should be returned against a certain person for a certain offence and an indictment was so found under the express instructions of the court.

The court has permitted the record to go in evidence to the jury to prove the time when a witness testified before the grand jury.<sup>98</sup> But a grand juror cannot testify to facts that would impeach the finding of the grand jury<sup>99</sup> or disclose how {120} any juror voted or what they said during their investigations.<sup>100</sup>

Where a statute provided "no grand juror shall disclose any evidence given before the grand jury," it was held not a violation of the act to state that a certain person, naming him, had testified before the grand jury, and the subject matter upon which he testified.<sup>101</sup> Nor is it a violation of the grand juror's oath of secrecy to report to the court the fact that a witness refuses to testify.<sup>102</sup> If the grand jurors are not required to take an oath of secrecy, they may be examined as witnesses touching matters which came to their knowledge while acting as grand jurors.<sup>103</sup>

This provision of secrecy not only surrounds the grand jurors, but also includes their clerk if he be not one of their number,<sup>104</sup> and the district attorney.<sup>105</sup> They may or may not be permitted to testify accordingly as a grand juror may or may not testify.<sup>106</sup> But it does not include witnesses who {121} testify before the grand jury; they may be compelled to disclose the testimony given by them.<sup>107</sup>

It has been held that it is not a contempt of court for a grand juror to refuse to testify how he voted on the finding of a certain indictment; the court had no authority to require such disclosure<sup>108</sup> and in refusing to answer the juror was acting strictly within his legal rights. In fact had he so testified in response to the question out, he would have been guilty of a violation of his oath.

### Other Aspects of the Oath

The remaining portion of the grand juror's oath does not require special consideration. It is clear and unmistakable in its terms and, consequently, has never been made the subject of judicial inquiry.

### Duties Imposed by Statute

In addition to the powers vested in them by their oath and the common law, grand jurors have in many instances other duties imposed upon them by statute. In many states grand jurors are required by statute to examine into the condition of jails, asylums and other public institutions; examine the

books and accounts of the various public officials in the county, fix the tax rate, and have a general supervision over public improvements.<sup>109</sup>

The Pennsylvania statutes impose upon a grand jury certain duties which relate to matters of the general public good within the county. Thus it is essential that the grand jury should pass upon the proposition to incorporate a borough within the county,<sup>110</sup> and the court will not review a question of fact as to the incorporation of such borough when the grand jury considers the incorporation necessary.<sup>111</sup> No public buildings may be erected within the county unless two successive grand juries have approved of the erection of such buildings,<sup>112</sup> and likewise no county bridge may be erected unless {122} two successive grand juries shall determine that it is necessary.<sup>113</sup>

In Connecticut<sup>114</sup> the town meeting chooses annually not less than two nor more than six grand jurors who are charged to "diligently inquire after and make complaint of all crimes and misdemeanors that shall come to their knowledge, to the court having cognizance of the offence, or to some justice of the peace in the town where the offence is committed," and they have power to require the person who informs them of the offence to make a proper information under oath and administer to them the oath of a witness.

In Georgia<sup>115</sup> they are authorized to act as a board of revision of taxes, and examine statements of the county liabilities and fix the rate of tax necessary to discharge such liabilities. They are also required to ascertain the condition of the county treasury.

In Mississippi<sup>116</sup> they are obliged to examine the tax collectors' books and accounts.

In Alabama<sup>117</sup> and Tennessee<sup>118</sup> they must investigate the sufficiency of the bonds of all county officers, while in Vermont<sup>119</sup> grand jurors are charged by statute with the duty of arresting persons having liquor for sale contrary to law, and may do so without a warrant; must seize the liquor, and may arrest intoxicated persons who have committed a breach of the peace.

Grand jurors are in general not called to be sworn in any cause,<sup>120</sup> but are sworn to inquire into all crimes which have {123} been committed within the county.<sup>121</sup> If, therefore, when the oath is administered it embraces one or more persons by name whose cases are about to be laid before the grand jury and in respect to which the oath is administered and nothing more, no evidence can be given under it in support of any accusation against others.<sup>122</sup>

## Endnotes

1. Jas. Wilson's Works. Vol. II, p. 365.

1\*. No statutory form of oath has been adopted by the United States, nor is any form of oath prescribed by statute in the states of New Jersey, Pennsylvania, Maryland, Delaware, North Carolina, South Carolina, Louisiana, and the Territory of

Hawaii.

The oath adopted by statute in all other states and territories is given as follows:

**ALABAMA.** Code 1896, Sec. 5024, prescribes a form of oath similar to the oath in the text, but makes particular reference to offences "committed or triable within the county."

**ARIZONA.** Code Crim. Proc. Sec. 800, prescribes substantially the same oath as used in Idaho.

**ARKANSAS.** Statutes, Chapter 49, Sec. 2041, prescribes substantially the same oath as used in Kentucky.

**CALIFORNIA.** Penal Code, Sec. 903, prescribes substantially the same oath as used in Idaho.

**COLORADO.** Ann. Statutes, 1891, Chapter 73, Sec. 2617, prescribes substantially the same oath as given in the text.

**CONNECTICUT.** General Statutes, Title 54, Chapter 281, Sec. 4795: "You solemnly swear by the name of the ever living God, that you will diligently inquire after, and due presentment make, of all breaches of law that shall come to your knowledge, according to your charge; the secrets of the cause, your own, and your fellows', you will duly observe and keep; you will present no man from envy, hatred, or malice; neither will you leave any man unrepresented, from love, fear, or affection, or in hope of reward; but you will present cases truly, as they come to your knowledge, according to the best of your understanding, and according to law; so help you God."

**FLORIDA.** Revised Statutes, 1892, Sec. 2808, prescribe substantially the same form of oath as used in Georgia.

**GEORGIA.** Penal Code, 1895, Sec. 825, prescribes substantially the form of oath contained in the text with this change, viz: "The state's counsel, your fellows', and your own, you shall keep secret, unless called upon to give evidence thereof in some court of law in this state."

**IDAHO.** Penal Code, Sec. 5293: "You, as foreman of the grand jury, will diligently inquire and true presentment make, of all public offences against the State of Idaho, committed or triable, within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the government, and will not, except when required in the course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You will present no person through malice, hatred, or ill will, nor leave any unrepresented through fear, favor or affection, or for any reward or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

**ILLINOIS.** Statutes, Chapter 78, Sec. 18, prescribes substantially the form set forth in the text.

**INDIAN TERRITORY.** Statutes Cr. Proc., Chapter 20, Sec. 1418: "Saving yourselves and fellow jurors, you do swear that you will diligently inquire of and present all treasons, felonies, misdemeanors and breaches of the penal laws over which you have jurisdiction, of which you have knowledge or may receive information."

**INDIANA.** Code Crim. Proc., Sec. 1721: "You and each of you, do solemnly swear that you will diligently inquire, and true presentment make, of all felonies and misdemeanors,

committed or triable, within this county, of which you shall have or can obtain legal evidence; that you will present no person through malice, hatred or ill-will, nor leave any unpresented through fear, favor or affection, or for any reward, or the promise or hope thereof, but in all your indictments you will present the truth, the whole truth, and nothing but the truth; and that you will not disclose any evidence given or proceeding had before the grand jury, so help you God."

**IOWA.** Code 1897, Sect. 5249: "You, as foreman of the grand jury, shall diligently inquire and true presentment make of all public offences against the people of this state, triable on indictment within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor or affection, or for any reward or the promise or hope thereof, but in all your presentments you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding."

**KANSAS.** General Statutes 1897, Chapter 102; Sec. 97, prescribes substantially the same oath as used in Indiana.

**KENTUCKY.** Statutes, Chapter 74, Sec. 2250: "Saving yourselves, you do swear that you will diligently inquire of, and present all treasons, felonies, misdemeanors, and breaches of the penal laws which shall have been committed or done within the limits of the jurisdiction of this county, of which you have knowledge or may receive information."

**MAINE.** Revised Statutes, Chapter 135, Sec. 2: "You, as grand jurors of this county of —, solemnly swear, that you will diligently inquire and true presentment make of all matters and things given you in charge. The state's counsel, your fellows and your own, you shall keep secret. You shall present no man for envy, hatred or malice; nor leave any man unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God."

**MASSACHUSETTS.** Revised Laws, Chapter 218, Sec. 5, prescribes with slight changes the same oath as used in Maine.

**MICHIGAN.** Howell's Ann. Stat. Sec. 9491, prescribes substantially the same form as used in Maine.

**MINNESOTA.** General Statutes, Sec. 5641, prescribes substantially the same oath as used in Indiana.

**MISSISSIPPI.** Code, Sec. 2372, prescribes substantially the form given in the text.

**MISSOURI.** Revised statutes 1899, Sec. 2489, prescribes a form substantially the same as used in Indiana.

**MONTANA.** Penal Code, Sec. 1761: "You, and each of you, do solemnly swear (or affirm) that you will diligently inquire into and true presentment make, of all public offences against the laws of this state, committed or triable by indictment in this county, of which you have or can obtain legal evidence, you will present no one through hatred, malice or ill will, nor leave any unpresented through fear, favor or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding, so help you God."

**NEBRASKA.** Compiled statutes, Sec. 8139, prescribes the same oath as used in Ohio.

**NEVADA.** Compiled Statutes, Sec. 4158, prescribes a form of oath substantially the same as the oath used in Indiana.

**NEW HAMPSHIRE.** Public Statutes, Chapter 253, Sec. 5, with slight changes, prescribes the same oath as used in Maine.

**NEW MEXICO.** Compiled Laws 1897, Sec. 967, prescribes substantially the same oath as used in Iowa.

**NEW YORK.** Code Criminal Procedure, Sec. 245, with slight changes, prescribes the same oath as used in Maine.

**NORTH DAKOTA.** Revised Code 1895, Sec. 8004, prescribes substantially the same oath as used in Idaho.

**OHIO.** Revised Statutes, Sec. 7191, prescribes the form given in the text, but beginning, "Saving yourself and fellow jurors;" preserving secrecy "unless called on in a court of justice to make disclosures;" and concluding, "you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding."

**OKLAHOMA.** Revised Statutes 1903, Sec. 5329, prescribes substantially the same oath as used in Idaho.

**OREGON.** Code, Section 1271, prescribes the following form of oath: "You and each of you, as grand jurors for the county of —, do solemnly swear that you will diligently inquire into, and true presentment or indictment make, of all crimes against this state, committed or triable within this county, that shall come to your knowledge; that the proceedings before you, the counsel of the state, your own counsel, and that of your fellows, you will keep secret; that you will indict no person through envy, hatred, or malice, nor leave any person not indicted through fear, favor, affection, or hope of reward, but that you will indict, according to the truth, upon the evidence before you, and the laws of this state; so help you God."

**RHODE ISLAND.** General Laws, Chapter 227, Sec. 34, provides "diligently inquire and true presentment make of all such crimes and misdemeanors cognizable by this court as shall come to your knowledge," but otherwise is the same as the oath used in Maine.

**SOUTH DAKOTA.** Revised Code Criminal Proc., Sec. 177, prescribes the same oath as used in North Dakota.

**TENNESSEE.** Code, Sec. 5833, prescribes substantially the same oath as used in Alabama.

**TEXAS.** Code Cr. Proc. 1897, Art. 404, substantially the same as the Maine oath except in this, viz: "The state's counsel, your fellows', and your own you shall keep secret, unless required to disclose the same in the course of a judicial proceeding in which the truth or falsity of evidence given in the grand jury room, in a criminal case, shall be under investigation."

**UTAH.** Revised Statutes 1898, Sec. 4708, prescribes substantially the same oath as used in Idaho.

**VERMONT.** Statutes, Chapter 233, Sec. 5418, prescribes with slight changes the same oath as used in Maine, but concludes with the added words, "According to the laws of this state."

**VIRGINIA.** Code, Tit. 53, Chapter 195, Sec. 3980: "You shall diligently inquire, and true presentment make, of all such matters as may be given you in charge, or come to your knowledge, touching the present service. You shall present no person through prejudice or ill will, nor leave any unpresented through fear or favor, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, so help you God."

**WASHINGTON.** Code, Section 6809 prescribes substantially the same oath as used in Vermont.

- WEST VIRGINIA.** Code, Chapter, 157, Sec. 5, prescribes substantially the same form of oath as used in Virginia.
- WISCONSIN.** Statutes, Chapter 116, Sec. 2547, prescribes substantially the same oath as used in Maine.
- WYOMING.** Revised Statutes, Sect. 5282: "You, as foreman of this grand inquest, do solemnly swear (or affirm) that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge, or otherwise come to your knowledge touching the present service. The counsel of the state, your own and your fellows, you shall keep secret unless called on in a court of justice to make disclosures. You shall present no person through malice, hatred or ill will, nor shall you leave any person unrepresented through fear, favor or affection, or for any reward or hope thereof; but in all your presentments you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding."
2. Wilkin's Leges Angliæ Saxonicae 117.
  3. Bracton — de legibus, (Sir Travers Twiss ed.) Vol. II, pp. 237-243.
  4. Id.
  5. Supra. 20, 21.
  6. Britton (Legal Classic Series) p. 17.
  7. Book of Oaths (London, 1649) 206.
  8. 1 Whart. Cr. Law, Sec. 453 (7th ed.).
  9. Jas. Wilson's Works, Vol. II, p. 365.
  10. Opinions of Attorneys General 22. And see 1 Whart. Cr. Law, Sec. 453 (7th ed.).
  11. In *State v. Stewart*, 45 La. Ann. 1164, decided in 1893, the grand jury were considering a bill against the defendant when a person, without being summoned appeared before the grand jury and gave his version of the case. A true bill was returned and the defendant sought to quash the indictment upon the ground that the indictment had been found at the instance of this witness. The court overruled the motion. In his opinion on appeal by the state on other grounds it was said by McEnery, J.: "It is complained by the defendant that one S. A. Morgan, the leading state witness, went without summons or request before the grand jury and gave his own version of the case against defendant, and instituted this prosecution. The witness had the undoubted right to go before the grand jury voluntarily and disclose his knowledge of facts in the case. As a good citizen it was his duty to do so. No one can be excused for withholding knowledge of a crime from the public until he is summoned to give his testimony of its commission." As to this decision it is sufficient to say that, it is contrary to the law as laid down by the courts of every other state.
  12. Mr. Justice Field's Charge to Grand Jury, 30 Fed. Cas. 992. And see *Welch v. State*, 68 Miss. 341; *Wilson v. State*, 70 Miss. 595; *McCullough v. Com.* 67 Pa. 30.
  13. Addison App. 47; Mr. Justice Field's Charge to Grand Jury, 30 Fed. Cas. 992.
  14. Addison, App. 38.
  15. *Res. v. Shaffer*, 1 Dall. 236.
  16. 30 Fed. Cas. 998.
  17. Charge to Grand Jury, 30 Fed. Cas. 980.
  18. Post 106 et. seq.
  19. *People v. Beatty*, 14 Calif. 566; *Ward v. State*, 2 Mo. 120; *State v. Overstreet*, 128 Mo. 470; *People v. Green*, 1 Utah 11; *Beal v. State*, 15 Ind 378; *Rutzell v. State*, 15 Ark. 67.
  20. *People v. Beatty*, 14 Calif. 566; *State v. Overstreet*, 128 Mo. 470.
  21. *Territory v. Corbett*, 3 Mont. 50.
  22. *People v. Beatty*, 14 Calif. 566; *Com. v. Gee*, 60 Mass. 174; *Allen v. State*, 5 Wis. 329. But see *Stark v. Bindley*, 52 N. E. 804.
  23. 1 Chitty Cr. Law 317; U. S. v. *Terry*, 39 Fed. Rep. 355.
  24. *Res. v. Shaffer*, 1 Dall. 236; U. S. v. *Lawrence*, 26 Fed. Cas 886
  25. U. S. v. *Palmer*, 27 Fed. Cas. 410; *People v. Goldenson*, 76 Calif. 328 But see *Lung's Case*, 1 Conn. 428; *In re Morse*, 87 N. Y. Sup. 721.
  26. U. S. v. *Blodgett*, 30 Fed. Cas. 1157. In U. S. v. *White*, 28 Fed. Cas. 588, the court intimated that witnesses for the defence may be sent to the grand jury with the consent of the district attorney.
  27. Mr. Justice Field's Charge to the Grand Jury, 30 Fed. Cas. 992.
  28. *State v. Fasset*, 16 Conn. 457. And see *State v. Walcott*, 21 Conn. 272; *State v. Hamlin*, 47 Conn. 95.
  29. *Lung's Case*, 1 Conn. 428.
  30. 1 Chitty Cr. Law 317; *Dickinson's Quarter Sessions*, (5th ed.) 156-158.
  31. The process is issued by the clerk of the court: *O'Hair v. People*, 32 Ill. App. 277; *Baldwin v. State*, 126 Ind. 24.
  32. And see *O'Hair v. People*, 32 Ill. App. 277; 1 Whart Cr. Law Sec. 490. But see contra *Warner v. State* 81 Tenn. 52.
  33. *In re Lester*, 77 Ga. 143.
  34. *State v. Smith*, 19 Tenn. 99; *Deshazo v. State*, 23 Tenn. 275; *State v. Parrish*, 27 Tenn. 80; *Doebler v. State*, 31 Tenn. 473; *Robeson v. State*, 50 Tenn. 266; *State v. Adams*, 70 Tenn. 647; *State v. Estes*, 71 Tenn. 168; *State v. Barnes*, 73 Tenn. 398; *State v. Staley*, 71 Tenn. 565; *Glenn v. State*, 31 Tenn. 19; *Garret v. State*, 17 Tenn. 389. But see *State v. Lee*, 87 Tenn. 114; *State v. Lewis*, Id. 119, for instances, where the inquisitorial power was illegally exercised. Where the grand jury is not specially vested with this authority, the general rule in Tennessee appears to be that the witness should be summoned to appear before the court to give evidence to the grand jury; *State v. Butler*, 16 Tenn. 83.
  35. *Ward v. State*, 2 Mo. 120.
  36. *Blaney v. State*, 74 Md. 153. This authority is not based upon any statute of Maryland.
  37. *Deshazo v. State*, 23 Tenn. 275; *Harrison v. State*, 44 Tenn. 195; *Robeson v. State*. 50 Tenn. 266; *State v. Adams*, 70 Tenn. 647.
  38. 1 Chitty Cr. Law 317; 2 Hale Pl. C. 157; 1 Whart. Cr. Law, Sec. 492. And see Co. Inst. Vol. II, p. 384.
  39. 1 Chitty Cr. Law 317.
  40. *In re Grand Jury*, 62 Fed. Rep. 840.
  41. Charge to Grand Jury, 30 Fed. Cas. 992; and see Chief Justice Shaw's Charge to Grand Jury, 8 Am. Jurist 218.
  42. *In re Grand Jury*, 62 Fed. Rep. 840; *People v. Hyler*, 2 Parker Cr. R. (N. Y.) 570. And see 4 Bl. Com. 303; Sir John Hawles, 4 State Trials 183; Lord Somers on Grand Juries, etc. In *People v.*

- Lindenborn, 52 N. Y. Sup. 101, it was held that the presumption of innocence must be overcome before an indictment can legally be found. In *Com. v. Dittus*, 17 *Lanc. Law Rev. (Pa.)* 127, although three respectable witnesses testified to the facts, the grand jury ignored the bill. Judge Landis criticised their action as being equivalent to the trial of the cause. As they, however, are the exclusive judges of the credibility of the witnesses, this criticism would seem unwarranted.
43. 1 *Whart. Cr. Law Sec.* 491; 7 *Smith's Laws* 687; 1 *Hopkinson's Works*, 194; *James Wilson's Works*, Vol. II, p. 365.
44. *Res. v. Shaffer*, 1 *Dall.* 236; *Add. App.* 39.
45. *People v. Hyler*, 2 *Parker, Cr. R. (N. Y.)* 570.
46. *Davis Precedents of Indictments*, 25.
47. *Davis Criminal Law in Va.* 426.
48. *Penal Code*, Sec. 921, *People v. Tinder*, 19 *Calif.* 539.
49. *Supra.* 95.
50. *McCullough v. Com.* 67 *Pa.* 30.
51. *Case of Lloyd and Carpenter*, 3 *Clark (Pa.)* 188.
52. *Charge to Grand Jury*, 30 *Fed. Cas.* 992.
53. It is of interest to note the change in the law as thus laid down by Mr. Justice Field from that prevailing in the time of Glanville and Bracton. Then the accusing body was generally obliged to present upon rumor alone. See *Supra*, part I, generally.
54. For instances where the grand jury has been directed to investigate into matters specially submitted to them by the court, see *Hartranft's Appeal*, 85 *Pa.* 433; *Com. v. Green*, 126 *Pa.* 531; *Com. v. Hurd*, 177 *Pa.* 481; *Charge to Grand Jury*, 5 *Dist. Rep. (Pa.)* 130; *Com. v. Kulp*, 17 *Pa. C. C. Rep.* 561; *Bucks County Grand Jury*, 24 *Pa. C. C. Rep.* 162; *Com. v. Wilson*, 2 *Chester Co. Rep. (Pa.)* 164.
55. *Supra.* 108, 109.
56. *Com. v. Green*, 126 *Pa.* 531; *Com. v. McComb*, 157 *Pa.* 611. And see *State v. Love*, 4 *Humph. (Tenn.)* 255; *Harrison v. State*, 4 *Cold (Tenn.)* 195.
57. *U. S. v. Fuers*, 25 *Fed. Cas.* 1223; *U. S. v. Thompkins*, 28 *Fed. Cas.* 89.
58. *Rowand v. Com.* 82 *Pa.* 405; *Com. v. Clemmer*, 190 *Pa.* 202; *Com. v. Beldham*, 15 *Pa. Superior Ct.* 33; *Com. v. Brown*, 23 *Pa. Superior Ct.* 470; *Com. v. Delemater*, 2 *Dist. Rep. (Pa.)* 562; *Com. v. Whitaker*, 25 *Pa. C. C.* 42; *Com. v. Reynolds*, 2 *Kulp (Pa.)* 345; *Com. v. Shupp*, 6 *Kulp (Pa.)* 430; *Com. v. Schall*, 6 *York Leg. Rec.* 24; *Com. v. English* 11 *Phila. (Pa.)* 439; *Com. v. Simons*, 6 *Phila. (Pa.)* 167; *Com. v. Wetherold*, 2 *Clark (Pa.)* 476. *Case of Lloyd and Carpenter*, 3 *Clark (Pa.)* 188; *Com. v. Green*, 126 *Pa.* 531: In this latter case the court granted leave to the district attorney to lay an indictment before the grand jury. In *Com. v. Jadwin*, 2 *Law T. (N. S.)* 13, a defendant was discharged at the preliminary hearing by the magistrate and the district attorney subsequently laid a bill before the grand jury upon his official responsibility which was returned a true bill. The court quashed the indictment. See also *Com. v. Moister*, 3 *Pa. C. C.* 539; *Com. v. Shubel*, 4 *Pa. C. C.* 12.
59. *Com. v. Sheppard*, 20 *Pa. Superior Ct.* 417.
60. *Case of Lloyd and Carpenter*, 3 *Clark (Pa.)* 188.
61. 11 *Phila. (Pa.)* 439.
62. 67 *Pa.* 30. In this case the indictment was based upon the return of a constable. In *Com. v. Pfaff*, 5 *Pa. Dist. Rep.* 59, it was held that an indictment based on a constable's return should not be sent to the grand jury without special leave of court.
63. 76 *Pa.* 319.
64. 82 *Pa.* 405. In New York under Code Cr. Proc., Sec. 270, a bill once ignored by the grand jury cannot again be resubmitted without leave of court: *People v. Warren*, 109 *N. Y.* 615.
65. *Com. v. English*, 11 *Phila. (Pa.)* 439.
66. 4 *Bl. Com.* 309.
67. *U. S. v. Shepard*, 27 *Fed. Cas.* 1056.
68. *Art. I, Sec. 10.*
69. 20 *Pa. Superior Ct.* 417. And see *Com. v. Brown*, 23 *Pa. Superior Ct.* 470.
70. *Com. v. Leigh*, 38 *L. I. (Pa.)* 184; *Com. v. Taylor*, 12 *Pa. C. C. Rep.* 326; *Com. v. Fehr*, 2 *Northampton Co. Rep.* 275; *Davidson v. Com.* 5 *Gen. Rep.* 484; *Com. v. Bredin*, 165 *Pa.* 224. In *Com. v. New Bethlehem Borough*, 15 *Pa. Superior Ct.* 158, Rice, P. J., says: "It is undoubtedly true that the court has discretionary and revisory powers over what are called district attorney bills, and where the sanction of the court to sending up such a bill has been obtained by deception, whether wilful or unintentional, it may revise its action even after the return of an indictment."
71. *Com. v. Griscom*, 36 *Pitts. L. J. (Pa.)* 332. But see *Com. v. Brown*, 23 *Pa. Superior Ct.* 470.
72. *Com. v. Simons*, 6 *Phila. (Pa.)* 167; *Harrison v. Com.* 123 *Pa.* 508. See *Com. v. Hughes*, 11 *Pa. Co. Ct. Rep.* 470, where an indictment was quashed upon the ground that it was for a different offense than that set out in the affidavit upon which the prosecution was based.
73. *Cons. U. S. Amend. V.*
74. *U. S. v. Smith*, 40 *Fed. Rep.* 755; and see *Walker v. People*, 22 *Colo.* 415; *State v. De Serrant*, 33 *La. Ann.* 979.
75. *U. S. v. Smith*, 40 *Fed. Rep.* 755; *U. S. v. Shepard*, 27 *Fed. Cas.* 1056.
76. *Ex Parte Moan*, 65 *Calif.* 216; *State v. Ross*, 14 *La. Ann.* 364; *State v. Vincent*, 36 *La. Ann.* 770; *State v. Whipple*, 57 *Vt.* 637. *CONTRA State v. Boswell*, 104 *Ind.* 541; *Richards v. State*, 22 *Neb.* 145. A defendant may be prosecuted by information after a nolle pros. is entered on a bill of indictment: *Dye v. State*, 130 *Ind.* 87.
77. *Sec.* 1022.
78. *Ex Parte Wilson*, 114 *U. S.* 417.
79. *Grand Jury v. Public Press*, 4 *Brews. (Pa.)* 313; and see *Act June 16, 1836, P. L.* 23.
80. 4 *Bl. Com.* 126, *Christian's Note*. The same reason for the requirement of secrecy is given in the case of *Crocker v. State*, *Meigs (19 Tenn.)* 127.
81. *Huidekoper v. Cotton*, 3 *Watts (Pa.)* 56.
82. *Rationale of Judicial Evidence*, Vol. II, p. 312.
83. *An Essay on the Law of Grand Juries (Phila. 1849)*.
84. 12 *Co.* 98.

85. 8 How. St. Tr. 774. Another instance of the grand jury hearing the evidence in public will be found in *The Poulterer's Case*, 9 Coke 55b.
86. *State v. Branch*, 68 N. C. 186.
87. *Grand Jurors as Witnesses* (M. W. Hopkins) 21 Cen. L. J. 104.
88. 4 Bl. Com. 126, *Christian's Note*.
89. That a witness who testifies falsely before the grand jury may be indicted for perjury upon the testimony of the grand jurors or by them of their own knowledge, see 1 *Chitty Cr. Law* 322; *U. S. v. Charles*, 25 Fed. Cas. 409; *R. v. Hughes*, 1 Car. & K. 519; *People v. Young*, 31 Calif. 563; *State v. Fassett*, 16 Conn. 457; *State v. Offutt*, 4 Blackf. (Ind.) 355; *Com. v. Hill*, 11 Cush. (Mass.) 137; *Huidekoper v. Cotton*, 3 Watts (Pa.) 56; *State v. Terry*, 30 Mo. 368; *Crocker v. State*, Meigs (Tenn.) 127; *Thomas v. Com.* 2 Robinson (Va.) 795.
90. *Huidekoper v. Cotton*, 3 Watts (Pa.) 56.
91. *Grand Jurors as Witnesses* (M. W. Hopkins) 21 Cen. L. J. 104.
92. *Huidekoper v. Cotton*, 3 Watts (Pa.) 56.
93. 1 *Greenleaf on Evidence* Sec. 252; *Low's Case*, 4 Greenl. (Me.) 439; *Territory v. Hart*, 7 Mont. 489; *State v. Logan*, 1 Nev. 509; *People v. Shattuck*, 6 Abb. (N. Y.) 33; *State v. Horton*, 63 N. C. 595. But see *Gitchell v. People*, 146 Ill. 175; *Shoop v. People*, 45 Ill. App. 110; *Hooker v. State*, 56 Atl. 390; *State v. Baker*, 20 Mo. 338.
94. *U. S. v. Porter*, 27 Fed. Cas. 595. *Fotheringham v. Adams Ex. Co.*, 34 Fed. Rep. 646; *Burnham v. Hatfield*, 5 Blackf. (Ind.) 21; *Perkins v. State*, 4 Ind. 222; *Kirk v. Garrett*, 84 Md. 383; *Com. v. Mead*, 12 Gray (Mass.) 167; *Com. v. Hill*, 11 Cush. (Mass.) 137; *State v. Broughton*, 7 Ired. (N. C.) 96; *Gordon v. Com.* 92 Pa. 216. And see *Rocco v. State*, 37 Miss. 357. CONTRA. 1 *Greenleaf on Evidence*, Sec. 252; *Imlay v. Rogers*, 2 Halst. (N. J.) 347.
95. *Com. v. Green*, 126 Pa. 531; *Com. v. McComb*, 157 Pa. 611; *Com. v. Kulp*, 5 Pa. Dist. Rep. 468. But see *State v. Davis*, 41 Iowa, 311.
96. *U. S. v. Farrington*, 5 Fed. Rep. 343; *Burdick v. Hunt*, 43 Ind. 381; *Hunter v. Randall*, 69 Me. 183; *Jones v. Turpin*, 6 Heisk. (Tenn.) 181.
97. *State v. Will*, 97 Iowa 58. And see *Contra. Hall v. State*, 32 So. 750.
98. *Virginia v. Gordon*, 28 Fed. Cas. 1224.
99. *U. S. v. Terry*, 39 Fed. Rep. 355; *U. S. v. Reed*, 27 Fed. Cas. 727; *R. v. Marsh*, 6 Ad. & El. 236; *Spigener v. State*, 62 Ala. 383; *Ex Parte Sontag*, 64 Calif. 525; *State v. Hamlin*, 47 Conn. 95; *Simms v. State*, 60 Ga. 145; *Gilmore v. People*, 87 Ill. App. 128; *State v. Gibbs*, 39 Iowa 318; *State v. Davis*, 41 Iowa 311; *State v. Mewherter*, 46 Iowa 88; *Com. v. Skeggs*, 66 Ky. 19; *State v. Beebe*, 17 Minn. 241; *State v. Baker*, 20 Mo. 338; *State v. Hamilton*, 13 Nev. 386; *People v. Hulbut*, 4 Denio (N. Y.) 133; *People v. Briggs*, 60 How. Pr. Rep. (N. Y.) 17; *Ziegler v. Com.* 22 W. N. C. (Pa.) 111; *Com. v. Twitchell*, 1 Brews. (Pa.) 551; *State v. Oxford*, 30 Tex. 428.
100. *U. S. v. Farrington*, 5 Fed. Rep. 343; *U. S. v. Kilpatrick*, 16 Fed. Rep. 765; *Stewart v. State*, 24 Ind. 142; *State v. Lewis*, 38 La. Ann. 680; *Com. v. Twitchell*, 1 Brews. (Pa.) 551.
101. *State v. Brewer*, 8 Mo. 373. CONTRA. *State v. Baker*, 20 Mo. 338; *Beam v. Link*, 27 Mo. 261. And see *Ex Parte Schmidt*, 71 Calif. 212; *Hinshaw v. State*, 47 N. E. 157.
102. *People v. Kelly*, 21 How. Prac. Rep. (N. Y.) 54; *In re Archer*, 96 N. W. 442; *Heard v. Pierce*, 8 Cush. (Mass.) 338.
103. *Granger v. Warrington*, 8 Ill. 299.
104. *Trials per Pais* (Giles Duncombe) Vol. II, p. 387; 1 *Greenleaf on Evidence*, Sec. 252; *State v. McPherson*, 87 N. W. 421.
105. *Com. v. Twitchell*, 1 Brews. (Pa.) 551; 1 *Greenleaf on Evidence*, Sec. 252; *McLellan v. Richardson*, 13 Me. 82; 1 *Bost. Law Rep.* 4; *Jenkins v. State*, 35 Fla. 737. And see *State v. Grady*, 84 Mo. 220, where the prosecuting attorney was required to testify. The attorney general on plea in abatement cannot stipulate what the evidence was: *People v. Thompson*, 81 N. W. 344.
106. 1 *Greenleaf on Evidence*, Sec. 252.
107. *People v. Young*, 31 Calif. 563; *People v. Northey*, 77 Calif. 618; *People v. Naughton*, 38 How. Prac. Rep. 430.
108. *Ex Parte Sontag*, 64 Calif. 525.
109. See *Thompson and Merriam on Juries*, Sec. 473-474.
110. Act April 1, 1834, P. L. 163; Act June 2, 1871, P. L. 283; Act May 26, 1891, P. L. 120.
111. *Millville Borough*, 10 Pa. C. C. Rep. 321.
112. Act April 15, 1834, P. L. 539; Act June 1, 1883, P. L. 58.
113. Act April 29, 1891, P. L. 31; *Pequea Creek Bridge*, 68 Pa. 427.
114. *General Statutes 1875*, p. 241, Sec. 1; p. 531, Sec. 2, 3, 4, 5. *Smith v. State*, 19 Conn. 493.
115. *Code 1873*, Sec. 3919; Sec. 510; Sec. 3920.
116. *Revised Code 1880*, Sec. 1675.
117. *Code 1876*, Sec. 4767-68.
118. *Statutes 1871*, Sec. 5079.
119. *General Statutes 1862*, p. 596, Sec. 25; p. 600, Sec. 33.
120. *U. S. v. Reeves*, 27 Fed. Cas. 750. In *Indiana*, St. 1825, p. 21, authorizing special sessions of the Circuit Court, does not warrant the finding of an indictment at the special term against any other person than the one for whose trial the court was convened: *Wilson v. State*, 1 Blackf. (Ind.) 428.
121. *Addison*, App. 36.
122. *U. S. v. Reed*, 27 Fed. Cas. 727. And see *Wilson v. State*, 1 Blackf. (Ind.) 428. CONTRA. In *re County Commissioners*, 7 Ohio N. P. 450.