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## MINNESOTA STATE BAR ASSOCIATION

SHALL THE GRAND JURY IN ORDINARY CRIMINAL CASES  
BE DISPENSED WITH IN MINNESOTA?

By PAUL J. THOMPSON\*

England, which got along without grand juries during the War, is now debating the advisability of dispensing with them permanently. This proposition is also the subject of discussion among Minnesota lawyers with reference to Minnesota grand juries. It is proposed to substitute the Wisconsin system providing for trials on information by the prosecuting attorney and allowing the defendant a preliminary hearing before a magistrate if he so desires. On this hearing the prisoner is either discharged or bound over for trial at the next term of court as the evidence may determine.

The object of this article is to present briefly the arguments on both sides and then to set out certain views of the writer on the question.

The arguments in favor of the grand jury can be summarized as follows: It is an ancient institution designed for the protection of the accused; by bringing an indictment it leaves the county attorney merely as the prosecutor and not the originator of the prosecution; it disposes of frivolous and technical cases with a no bill; it furnishes a means to get evidence which could not otherwise be brought out; where the prosecution is not preceded by a complaint it protects the complaining witness against a "come back" in the form of an action for malicious prosecution in the event there is nothing to the state's case; it provides a means for bringing dishonest public officials to trial; it spurs on the lazy or laggard county attorney; it unearths and lays bare vicious and corrupt conditions in both city and country, especially the former.

Against the arguments we find the following:

The system is antiquated, cumbersome and expensive; in most cases the grand jury acts as the "rubber stamp" of the county attorney; instead of being independent, grand juries are sometimes subject to outside influence; the county attorney uses the grand jury to "pass the buck to," grand juries often "leak" information; in order to get necessary testimony to indict it is sometimes necessary to give immunity where it need not have been given could the county attorney prosecute by information; the accused is not protected from unjust indictment by the grand jury but many unjust indictments are found owing to the fact that ordinarily only the state's side of the case is heard; by presenting a case direct to the grand jury in many instances defendants are deprived of their right to preliminary hearings. Grand juries are prone to hear incompetent and hearsay evidence; the grand jury under our laws is an ungoverned and ungovernable body, responsible to no one, working in secret and blasting

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by an indictment the reputation of many a person whom it finally develops there is no evidence to convict.

Very few of these arguments on either side need elaboration. Every lawyer on reading them can balance advantages and disadvantages and make up his own mind on the subject. The recent action of a Hennepin County grand jury in its final report to the Court recommending the disuse of the body in the ordinary case shows that the subject is a live one at this time. The State Bar Association has a special committee studying the subject.

In the opinion of the writer, the arguments against the use of the grand jury weigh more strongly. The grand jury should be dispensed with except in unusual cases where public necessity requires; such as cases where charges are made against public officials or certain conditions exist in a community that call for a clearing of the moral atmosphere.

No grand jury can hear twenty to thirty cases a day as is often done in Hennepin County and have the action taken in these cases be anything more than perfunctory.

Section 9117 of the 1913 Statutes providing for the calling of witnesses for the defense before the grand jury has practically fallen into disuse. It was put in the law for a purpose—to head off frivolous prosecutions or those brought solely for revenge.

Grand juries in counties where certain laws are unpopular fail to indict even though the evidence be clear and who can call a grand jury to account in such a case and by what means? A county attorney, if he failed to prosecute under similar circumstances, could be removed by the governor for non-feasance.

The expense item is large. Hennepin County spent during the year 1921 for fees of grand jurors, \$4,244.70 and for witnesses before the grand jury \$2721.90, a total of \$6,966.60. The expense of the time spent on grand jury activity by the county attorney and his assistants, the sheriff and his deputies in serving subpoenas and the time of the district court in dealing with the grand jury should be added to this total.

The public would be amply protected if a special grand jury could be called when necessary by the presiding judge, the board of county commissioners or by a designated number of tax payers.