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LAWMEN CLAIM VENIRES CAN BE STACKED

Grand Jury--Civic Safeguard or Political Hammer?

By ROSEMARY JAMES

Is the grand jury a boon to the citizenry it represents or a bogie man?"

The grand jury system, which has been a part of our inheritance since earliest times, traditionally has been considered a safeguard to personal liberty.

The whole concept of the grand jury has been to provide a citizen — protecting him from abuse, tyranny, oppression, despotism, anarchy and unlawful restraints or punishment caused by unfounded charges.

THE SENIOR JUDGE of Criminal District Court, Ber-

nard J. Bagert, however, describes the grand jury system as a bogie man" and calls for its abolition.

In an interview this week, Judge Bagert reiterated remarks he had made in a blistering speech about the grand jury system two years ago.

"It simply is not true that the grand jury system protects the individual from oppression," Judge Bagert said.

"Indeed, it has a far greater potentiality as an instrument of oppression. It reminds me of when we were told as children that if we didn't obey our parents, the bogie man would get us. Well, that is the grand jury," he said, "the bogie man."

Judge Bagert emphasized that he did not want to cast any reflection whatsoever on the integrity of individual grand jurors who have served here.

DURING THE LAST SEVERAL months, a number of individuals have repeated, in less colorful terms, Judge Bagert's description of the grand jury. They have charged that the Orleans Parish Grand Jury is being used as a weapon of harassment and intimidation.

The allegations have come in answer to actions taken

by the grand jury in connection with two probes instigated by Dist. Atty. Jim Garrison — the Kennedy assassination investigation and the probe of charges that organized crime elements operate in the city.

Because both probes have had wide public interest and because the charges made have been of a serious nature, the grand jury system itself has come into the focus of public attention.

No attempt is being made to evaluate the merits of individual charges. The fact that they were made, however, prompts an analysis of our grand jury system and

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Grand Jury Safeguard Or Political Hammer?



JOHN P. DOWLING

JUDGE
BERNARD J. BAGERT

WILLIAM F. WESSEL



AARON M. KOHN

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the laws that govern it in an attempt to determine if there are weaknesses in the system that could provide opportunities for misuse of the jury's powers.

Thus far, the charges brought about the jury in connection with the two probes are still before the courts. During the legal skirmishing, though, parts of the law have been attacked.

FIRST, THE METHOD IN which grand jurors are selected has been criticized.

Second, the part of the law which prevents a grand jury witness from having legal counsel at his side in the jury room has been challenged.

Third, the requirement that a witness keep secret his testimony before the jury has been questioned.

To determine if any of the points made have validity, questions were directed to the men most directly concerned with the grand jury — criminal lawyers, judges, law professors, members of the crime commission and the first assistant district attorney.

In taking up these points of attack, it was found that, locally, there is some sympathy for the idea of abandoning the grand jury system altogether. However, most of those questioned felt that this is not likely to come about any time soon and that the grand jury is something they have to live with. And, since the system is a fact of life, most would like to see some improvements made, although they did not always agree on the parts of the law that might need revision.

IN NEW ORLEANS, GRAND JURORS are selected by the presiding judge from a venire drawn by the Jury Commission a political board appointed by the governor.

Aaron Kohn, managing director of the Metropolitan Crime Commission, asks, "Why do we need a Jury Commission? Grand juries in Louisiana have a long tradition of being used to serve political ends instead of the ends of justice. They can be manipulated because of the way in which the grand jury system is set up under state law.

"The Jury Commission decides who shall even be qualified to serve as jurors. As a result, people can be appointed as part of a political machine in situations where there is an effective machine working, a citizen doesn't even get on the jury list unless the machine is sure he is politically safe," Kohn said.

Attorney William F. Wessel, a past president of the Louisiana Bar Association, like Kohn, believes that if the jury venires were compiled by Civil Service employees there would be less chance of political favoritism entering the selections.

NAMES OF PROSPECTIVE jurors, they believe, should be culled from lists of all qualified persons in the community, such as voter registration rolls. Voter lists are used for federal grand jury selections here, and the names for the jury venires are chosen by taking every hundredth name on the voter rolls.

One judge, who declined to be quoted, feels there should be more of an element of chance in the selection of jurors than is evident in the Orleans system.

In the federal system here, all of the cards for prospective jurors are placed in a wheel by the clerk of federal court and the jury commissioner, who must be a member of the opposite political party, and a month before each court session 50 names are drawn out of the wheel in open court. The grand jurors are then seated, on the first day of the session, in the order they were drawn.

In Orleans Parish there has been somewhat of a tradition or trend toward the blue-ribbon grand jury, going on the belief that there is no special merit in granting important legal responsibilities to people whose only qualifications for service are that they can see and hear.

Out of the venire presented him by the jury commission, a judge would then select the persons he thought most qualified to serve and bypass those to whom jury service would pose hardship.

RECENT U.S. SUPREME COURT rulings, however, have made the systematic exclusion of daily wage earners or whole races of people a cause for overturning convictions.

John P. Dowling, new president of the Criminal Courts Bar Association, said that cases where systematic exclusion of Negroes has been proved demonstrate how the Jury Commission system can be used to stack grand juries.

"If you can exclude a whole race of people, or systematically include a token few 'safe' Negroes, you can include or exclude whom you choose," Dowling said.

Dowling said that a Negro sentenced to death for the rape of a white woman in Plaquemines Parish won a retrial after his death warrant already had been signed when he and an associate were able to prove to a federal court's satisfaction that the Plaquemines Parish Jury Commission had practiced token inclusion of Negroes on grand juries in the parish, including the one which indicted him.

"A grand jury," Dowling said, "should be a representative cross-section of the community without exceptions for economic class, race, sex or any other factor."

CHARLES RAY WARD, FIRST assistant DA, said he would favor any such changes that "might remove some of the possibilities for corruption." A number of other attorneys, who declined to be quoted directly, agreed.

All of the men questioned felt that grand jurors should be paid. They believe this would prevent any class of people from excluding themselves because of hardship. Grand jury service is long — six months — and a daily or hourly wage earner could suffer a great loss of income over the period of service. In the past, Orleans grand jurors have not been paid. A recent ruling from the city attorney's office makes it possible now for them to apply for daily remuneration while sitting.

The general feeling seems to be that the pay should be made available without the need to apply.

Should a grand jury witness be permitted to bring legal counsel with him when he appears before a session of the jury?

This question and other arguments involving the whole grand jury concept will be discussed in a second article appearing Monday.