THE GRAND JURY

RESEARCH REPORT NO. 32

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MARYLAND LEGISLATIVE COUNCIL

The Grand Jury

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By

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Foreword

This study of the workings of the grand jury system is designed to meet a continuing interest in the subject in legal and governmental circles throughout Maryland.

The grand jury as an integral part of the judicial process has its roots far back in medieval England, the birthplace of so many of our American legal and political institutions. In England it filled a vital and necessary role in assuring justice and protecting citizens from arbitrary and capricious prosecution.

Yet as the culmination of a centuries-long evolution in legal procedure, the grand jury since 1933 has been virtually non-existent in England. Many American jurisdictions also have either abolished it as part of their usual enforcement machinery or have greatly modified its use.

Similar questions have arisen in Maryland. Most fundamentally, some are questioning if this State should abandon its traditional grand jury processes. Less basically, other questions of improved procedure are being discussed, involving such topics as term, secrecy of proceedings, and selection.

Mr. Benson, the author of the report, has consulted extensively with legal and judicial officers and with persons having a first-hand familiarity with grand jury procedure. He has read widely, also, in the literature in this field. His report is an extensive coverage of the history, workings, and prospects of the grand jury system in Maryland.

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SUMMARY

The grand jury is a form of jurata, a body of men assembled together for a specific purpose. In the form in which we know the grand jury today, it evolved in England as a result of the merger of certain early institutions and forms of proceedings. Although its beginnings are found many centuries ago, the grand jury is still used in Maryland as a necessary part of the criminal process of our State. In other states, it has been supplanted by different modes of proceedings; in other countries, it has been nearly abolished. This trend toward replacement of the grand jury has led to thoughtful consideration of its place in Maryland criminal law and to questions concerning its future course.

It is generally known that the grand jury is very old; juries in this State are frequently charged that it is an institution of great antiquity, dating back some 600 years to early English history. Abroad, the grand jury was long regarded as one of the paramount protections of an Englishman's security. In the United States, the grand jury, while working satisfactorily for decades and occasionally receiving high praise for its work, may have lost the historic reason for its existence.

It is, therefore, the purpose of this report to set out the background of the grand jury in order to understand the reasons for its existence and to make recommendations for its future.

The grand jury resulted from the merger of two institutions; one native to England, the jury of presentment, and one brought over to England by the Norman invaders from Europe, the jury of inquisition. Against the background of the times, the jury of presentment was ideally suited to the workings of the tithing and frankpledge systems, methods of keeping the peace and of raising revenue. The two juries become one under the powerful rulers of England, and were used to administer criminal justice in the King's courts and likewise in the local county and hundred courts. A recognition of the need for reform led to the abolition of the old methods of trial of cases, in favor of a trial by jury, leaving as a separate body the older "Grand Inquest" or grand jury as we know it today. It was within a period of approximately two hundred years after the Assize of Clarendon in 1166 A. D., that the grand jury reached its present day form. Since then certain procedural changes have taken place in the grand jury, but otherwise we see the same Grand Inquest of early England operating in Maryland.

The reason for the existence of the grand jury today is said to be that it embodies a fundamental concept of human liberty, namely, that a man shall not (for felonies at least) be put upon trial, except by a jury of his peers. In spite of this common law concept, there are many states that have called no grand jury for years and whose criminal procedure is complete without any accusation by a grand jury. It is also of interest that in England where the grand jury originated, it has for all intents been abolished since 1933.

Those jurisdictions that no longer use the grand jury have then apparently found a satisfactory substitute in the use of the information system. Is this method the equivalent of the grand jury proceeding in providing adequate safeguards to personal liberty in criminal actions or is it a better method of proceeding? That it is at least the equavalent of the grand jury appears to be obvious. However, there are reservations. The backbone of the information system is the preliminary examination before the magistrate, where he must first find probable cause of the commission of a crime as does the grand jury now. In Maryland, the position of magistrate under present law does not conform to what is required for the information system. It is suggested that the English system of lay and stipendiary magistrates could be considered as a model. Whenever reform of the magistrate system has been achieved, it will then be necessary to limit seriously the use of the grand jury, retaining it principally for inquiry into political matters.

Aside from the general problem of the future of the grand jury, there are questions as to how and why the present procedure of the grand jury can be streamlined to make it more efficient. The grand jury should not be limited to the term of court for which appointed but be allowed to continue as an entity to pursue its work when necessary. Grand juries have always deliberated in secrecy, and their minutes should remain secret. Selection of grand jurors has customarily been by lot, but other methods are in use and their efficacy commends more extensive use.

In the recommendations contained at the end of the report, it is pointed out that all improvements are but stop-gaps in streamlining the indictment proceeding until such time as the more efficient combined information and indictment procedure can be installed. It is believed that these recommendations would make the Maryland system of administering criminal justice efficient, while at the same time protecting the rights of all persons, principally those of the accused.

Finally, there are tables in the Appendix showing the present status in each State of the use of the indictment and information process and a listing of the inspections made by Maryland Grand Juries, together with other relevant matter pertaining to the grand jury.

I. Historical Background of the Grand Jury

A. RISE OF THE GRAND JURY

1. Tithing and Frankpledge

The grand jury is derived from two early forms of jurata, or juries, or bodies of men assembled for a definite purpose, usually to answer inquiries addressed to them. One of these jurata was Norman in origin; the other, Anglo-Saxon in origin. They were, respectively, the jury of presentment and the jury of inquisition.

The jury of presentment arose through Anglo-Saxon customs whose antecedents precede the Norman invasion of 1066. It was an institution concerned with the keeping of the peace (that is, prevention and apprehension of crime).

Responsibility for keeping the peace in Anglo-Saxon days was an individual matter. There was no police force to give one protection; the powerful lord was protected by his armed followers, and the little man, by the stout door of his home.

There had been some regulation of the peace under laws enacted by Kings Edgar, Edward and Cnut, which imposed certain police duties on the hundreds and tithings.

The hundred was a small geographic area of a county, including probably a town or possibly only several villages. The tithings were the people within a hundred or a group of families therein, each divided into groups of about ten in number and presided over by a tithing man.

One of the laws of Cnut had required that all persons must be enrolled in a tithing within a hundred. It was also the law that a person accused of a crime must find a voluntary "borh" or security who would guarantee the appearance of the accused to answer the charge. However, the persons so enrolled in tithing were not compulsory securities for each other.

In those early days the King was not the fountain of justice as he is thought of today. The laws of Cnut provided that no person should appeal to the King unless he had failed to obtain justice from the hundred court.

The workings of tithing were investigated by these local courts. Both the county and hundred courts possessed concurrent jurisdiction, and the sheriff of the county usually presided over the county court sessions while his deputy frequently sat in the hundred court. When a crime was committed, the customary punishment was to levy a fine on the tithings or on the entire hundred, leaving them to deal with the offender.

The Normans' contribution to this system of keeping the peace was to combine tithing and borh into a system called "fri-borg" or frankpledge (free security). It was now compulsory that all persons and tithings not only were enrolled together, but they were responsible for each other, unless excused by reason of rank or age. This system was seized upon by the Normans as an ideal method of making the Anglo-Saxons responsible in a country where they greatly outweighed their Norman invaders in numbers.

The language that caused this change is found in Section 8 of The Laws of William I providing:

"Every man who wishes to be accounted as free, shall be in pledge so that the pledge hold him and produce him before the court if he offend, and if anyone of such people escape, let the pledges see that they pay the sum claimed by the plaintiff, and prove that they were privy to no fraud committed by him that has escaped."[1]

Frankpledge is defined in Holdsworth as "a system of compulsory collective bail fixed for individuals, not after their arrest for crime, but as a safeguard in anticipation of it"[2]

A great change in procedure in the royal and local courts was enacted by the Assize of Clarendon in 1166. The first clause of Clarendon provides that "for the preservation of the peace and the maintenance of justice inquiries be made throughout each county and hundred by twelve legal men of the hundred and four legal men from each township under oath to tell the truth; if in their hundred or their township there be any man who is accused or generally suspected of being a robber or murderer or thief, or any man who is a receiver of robbers, murderers or thieves since our Lord the King was King".[3]

This marked a great change in the English criminal law. The duties at the view of frankpledge became affirmative on those in attendance. They must now report to the sheriff all criminal conduct, on fear of fine for failure to report all. We now have a new jurata, the jury of presentment, the direct ancestor of the grand jury. It combined the Norman jury of inquisition and the jury used to view frankpledge by the Anglo-Saxons.

[1] Holdsworth, History of English Law, Vol. 1, p. 14.
[2] *Ibid.*, Vol. 1, p. 13.
[3] *Ibid.*, Vol. 1, p. 77.

The Assize of Clarendon also provided that the crimes of robbery, murder and theft should henceforth be pleas of the Crown, removing them from the jurisdiction of these local hundred and county courts. Ten years later, by the Assize of Northhampton, the crime of arson, treason and forgery were made pleas of the Crown; in effect, making all serious crimes (felonies) triable only before the King's courts or royal justices.

The hundred court sessions were affected by legislation subsequent to the Assizes of Clarendon and Northampton. Magna Carta in 1217 by Section 24 forbade the Sheriff of the County from hearing (trying) pleas of the Crown, confining his criminal jurisdiction to petty criminal cases. It also provided in Section 42 that the Sheriff should not make his tourn more often than twice a year. Since the hundred court met every three weeks, this meant that the view of frankpledge and the presentments would be made at a special distinct session of the hundred court. It became known as the sheriff's tourn; as the sheriff made his way around the county he held his tourn in each hundred as a criminal session.

Procedure at the hundred courts utilizing the jury of presentment was as follows:

> The tithings appeared by their chief pledges, the townships by four men and the reeve. Certain inquiries, known as articles of the tourn were addressed to the jury of presentment. They were firstly to inquire whether frankpledge was in good working order, and they were required to make presentments of persons suspected of many miscellaneous offenses, and as to other matters affecting the maintenance of order and good government in the hundred. These presentments were made to a jury of twelve free men of the hundred who either accepted or rejected them. If accepted, the jury passed on the presentments to the sheriff. Those accused of more serious crimes went to the King's court or before his justices upon arrest and those accused of lesser crimes were amerced (fined) by the sheriff, after two suitors (persons in attendance) of the court had set the amount of the fine.
>
> The real business of these meetings of the court was criminal charges, the presentment of the jury of the hundred to the sheriff. The information of the chief pledges and the view of the township was little more than evidence for the jurors. They could act on their own initiative if they so desired.[4]

Gradually, frankpledge per se as a method of keeping the peace gave way to the simpler machinery of the jury of presentment. The tourn came solely to revolve around the presentments. For example, to illustrate that frankpledge and the presenting jury were distinc ideas, the Statute of Wales in 1284 introduced the jur of presentment as part of Welsh criminal procedure The frankpledge system had never been operative there

The tourn as the local method of criminal accusatio continued effectively for some two hundred years. I was a court of petty offenses and concerned with th smaller details of local government. Articles of tour relate to such diverse matters as purprestures, stoppag of ways, housebreakers, thieves, affrays, escapes, forger treasure trove, breakers of the assize of bread and ale false weights and measures and of "such as sleep b day and watch by night, and eat and drink well an have nothing".[5]

A statute of 1285 required that inquests be taken b at least twelve lawful men who were to set their sea to the presentment. After 1344 it was ordered by th royal courts that the tourn not inquire into any ne statutory offenses unless special permission be given b the statute. The Articles of tourn had by that time be come unnecessarily lengthy. At last, in 1461, it wa provided that sheriffs should no longer have the powe to arrest or to levy fines or amercements inflicted, bu should only transmit indictments to the new justice the peace. This statute marked the effective end of th sheriff's tourn; henceforth criminal prosecution becam a matter for the King's courts through the justices the peace and the common law courts.

2. The Common Law and Royal Courts

England in 1066 was invaded and conquered by th Normans of France. These people brought over the foreign customs and made use of them, though the professed to believe themselves as the successors of th deposed Anglo-Saxon kings.

The Normans had as one of their customs the use a jury of inquisition for many governmental purpose The King, or his ministers, whenever information of ar kind was required, summoned before him a group men who could reply to the inquiries put to them. Th jury of inquisition was a tested, valuable and efficie source of information for the royalty by the time th Normans invaded England. The conquerors prompt put these juries to use. The famous Domesday Boo (1086) was compiled by the King's agents from da supplied by juries of inquisition throughout England.

Upon the invasion of the Normans, other chang took place in Anglo-Saxon England. The countr under Norman rule, became unified with the reign the all-powerful King. Whereas formerly England ha three important bodies of law, Dane, Mercian and We

[4] *Ibid.*, Vol., 1, pages 77-78.

[5] *Ibid.*, Vol. 1, page 79.

Saxon, now under William the Conqueror there arose a unified law which ultimately developed into the common law.

The common law flourished principally as a result of the rise in importance of the royal courts. In the beginning of their reign, the Normans conducted a Court during meetings of the Curia Regis or Royal Council. The latter was a meeting of the King and his chief counsellors, his ministers, royal officials of his household and important feudal tenants, nobles and other influential persons of the country. It transacted without any change in its style and form, judicial, administrative, legislative and all other necessary business of the realm. Customarily, the Curia Regis met each year in full session only at the three church festivals of Christmas, Easter, and Pentecost.

The legal jurisdiction of the Curia Regis extended not to any definite type of cases, but to all those cases affecting the king himself and those in attendance on his court. The Curia Regis was thus originally a court of great causes for great men. It was not to remain so for long.

The day-to-day routine business of government was transacted by a small group of permanent officials and the most important of the barons. From this group in the early days of the twelfth century there developed a department known as "barones," later called the Exchequer. While their principal function might have been to supervise royal accounts, the Exchequer soon began to engage in cases of debt and before long in other legal cases. The use of the Exchequer as a court was popular. It could compel the appearance of a defendant, its procedure was more efficient than that of the local courts, it could enforce its judgments and finally its location was more convenient than following the King around in his travels.

The barons were pleased with this legal business, because litigants paid fees for writs, pleas, trials, judgment, for expedition and for delays, all contributing handsomely to the King's treasury.

Although intended as an administrative department, Exchequer continued in existence as a court until 1873, despite attempts to confine its jurisdiction to matters affecting royal revenue.

Reference has been made to the practice by William I of sending royal officials around the country on various errands. These officials inquired into a variety of problems, administrative, financial, or judicial. While making their inquiries, they acted as a jury of inquisition, which was a familiar institution to the Norman kings.[6]

Together with this practice there began, under Henry II (1154-1189) a system of sending royal officials under much wider instructions or commissions to visit each county every few years. These visits were known as "general eyres" from the commission of eyre under which they acted. By 1176 there were eighteen justices assigned to the various circuits into which the country was divided. Their visits were regularly made to every county.

The authority and jurisdiction of these justices was defined in their commissions. They were instructed to carry out a thorough investigation of local government and finances and to deal with the prisoners reserved to them by the sheriff. The justices were supplied with a list of questions, called articles of eyre, which they were to propound, which required answers by the local officials.

These articles of eyre were very searching and minute in detail. They covered the entirety of county government. Eyre resembled the sheriff's tourn, except that it was on a much larger scale.

The articles were addressed to a jury of presentment, selected by varying practices in the different parts of England. Generally this was the practice: The bailiff of each hundred chose two or four electors, who chose themselves and twelve others from their hundred. From among these representatives of the hundreds, twelve persons were selected to hear and respond to the articles of eyre.

Eyre proved to be an exceedingly unpopular institution. Every excuse for the infliction of fines was quickly seized upon, and those local officials who were questioned and who escaped without a fine considered themselves lucky. The jury of presentment was itself fined for wrong answers. Accusations by the jury which could not be substantiated also resulted in the members being collectively fined. Litigants were fined and guilty persons as well, as an incident to their punishment.

In 1233, the good citizens of the county of Cornwall fled into the woods upon notice of the coming of eyre to their county. It became the established rule that eyre should not be held more often than once in every seven years in any county. In 1248 petitions were presented to the Crown that eyre should cease. That it did during that same century was due to the rise of Parliament, which rendered unnecessary any inquiry generally into matters of local government.

[6] Stephen (1135-1154) sent out royal officials to hear civil and criminal pleas of the Crown. This practice at first was irregular and infrequent.

Thereafter the business of eyre became mainly judicial.

It was the creation of the assizes to recover land by King Henry which led directly to widespread use by litigants of the eyres conducted by the justices. At his Curia Regis at Windsor in 1179 Henry provided for the Grand Assize. This permitted a defendant against whom a claim was made for land in his occupation, instead of going to trial by battle in the lord's court, to insist on an investigation by a special jury according to the evidence in the king's court. The jury was selected under the writ "that by four knights from the county and from the neighborhood there be elected twelve legal knights from the same neighborhood to say upon oath which of the two parties to the action had the better right to the land which was the subject of the action".[7] It should be noted that this was another form of jurata.

Henry also established the petty assizes, actions to resore to one who had been dispossessed in his rightful possession of land.[8]

Upon the creation of these writs, commissions of assize were issued to the justices authorizing them to travel to a particular locality and to hear the writs of assize awaiting trial. Civil jurisdiction generally was soon given to the justices, to hear cases at nisi prius. This meant that the sheriff was to empanel a jury of twelve to come to the King unless previously (nisi prius) the King's justices had visited the county. It was a roundabout system, but the effect of it was that the justices heard cases locally, so that any action triable before the King's courts could be heard at the assizes. Their law superseded the bodies of custom administered in the local courts. This law became common to the whole country, and today we call it the common law.

The criminal commissions that were issued to justices of assize were two in number. In 1299 the commission of gaol delivery was created, and in 1329 the commission of oyer and terminer. The former was an authority to hear and try all persons held in custody at a certain place. The latter was either a general commission to hear and try all cases committed to them from a certain area or a special commission to hear a particular case only, or a particular class of cases. Over the years the distinction between the two commissions became rather fine and of no real importance. Both extended criminal jurisdiction.

In about 1178 King Henry established a fixed court of his royal judges, since there had been complaints that a litigant must either follow the King to enter his suit or wait for a justice at eyre to visit his county. This court was usually found at Westminster, and the rolls of its proceedings were designated "de Banco", but when it followed the King its rolls were marked "Coram Rege".

By Clause 17 of Magna Carta, accepted by King John in 1215, it was provided that "common pleas shall not follow our court but shall be held in some certain place."[9] This meant that civil cases (common pleas) came before the de Banco court and pleas of the crown (criminal cases) before the King. The former court became known as the Court of Common Pleas and sat at Westminster. The other became the Court of King's Bench and although for a while it followed the King, it too located at Westminster during the 13th Century.

The other court which has been mentioned was that of the Exchequer which had evolved first.

3. The Justice of the Peace

The reasons that led to the decline of the sheriff's tourn and the old county and hundred courts have been mentioned. The Crown soon felt the necessity of having an appointive royal official in control of local affairs. In the 12th Century, the practice arose of issuing commissions of the peace to conservators. In the first year of the reign of Edward III (1327) provision was made for the appointment of conservators of the peace in each county. Their powers were steadily enlarged by statutes in 1328, 1330, 1333, 1339 and 1343. In 1344, these conservators were authorized to hear and determine felonies and trespasses.

By a statute of 1361 with "One lord and with him three or four of the most worthy in the county with some learned in the law," these justices were empowered to keep the peace, to arrest and imprison offenders, to imprison or take security of suspected persons, and to hear and determine felonies and trespasses done in the county.[10] In 1363, they were ordered to hold their sessions four times a year.

At about this time, the conservators became known as justices of the peace, and when sitting as a court, it was known as the Court of Quarter Sessions. Gradually to the justices fell the duty of enforcing most of the statutory law of England.

Procedure before the justices in their Courts of Quarter Session was very similar to that before the royal justice at eyre on a criminal commission and the old sheriff's tourn.

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[7] *Ibid.*, Vol. 1, p. 328.

[8] The assizes of novel disseisin (1166). mort d'ancestor (1176), darrein presentment, and utrum. See *ibid.*, Vol 1, p. 329.

[9] Archer, The Queen's Courts, page 26.

[10] Holdsworth, *op. cit.*, Vol. 1, p. 288.

The criminal jurisdiction of the justice was wide, extending normally to all crimes except treason. It was their custom to send the more difficult cases to the justices at assize. It was not until much later, in the eighteenth century, that the custom arose of sending capital cases to the assizes. In 1842, by statute it was provided that the justices should have no power over certain classes of criminal cases.

During the years following the Assize of Clarendon and the use of the jury of presentment for initiating criminal accusations, the jury used was a hundred jury. It was therefore a jury taken from the area for which they made presentments. The size of the jury varied, but was usually around twelve persons.

About the year 1400, the method of selection of the presenting jury changed. Professor Holdsworth states it is not yet clear what caused the change, but the sheriff was directed to summon for the business of the assizes or of quarter sessions, twenty-four persons from the body of the county.[11] From this number, twenty-three were chosen and a majority of these determined whether a true bill was found or whether the accusation was ignored. With this change, the twenty-four from the entire county formed the "Grand Enquest" as it thereafter was called in England, and it is the same jury referred to in Part II in early Maryland colonial days.

B. THE DECLINE OF THE GRAND JURY

In Maryland, we now say that we have as a part of our common law the 600-year old English grand jury system. We took the English grand jury for use in Maryland at a time when it was flourishing and fully developed in England. Since our Revolutionary War days, however, the grand jury in England has fallen into disuse and has been in the present century repealed in England for most purposes. The reasons and causes leading to this result in England will be mentioned next.

At about the same time that the grand jury emerged in the 14th century as a definitive institution, the factors that would ultimately lead to its abolition in 1933 also had begun to appear.

The grand jury was originally created because of its special knowledge of crimes in its neighborhood. The justices' Quarter Sessions courts used a presenting jury drawn from the body of the county, which jury came over the years to know less and less of what went on in the county. The justice was able to obtain better information from the high constable of the county through the petty constables. The constable, therefore, soon made the presentments as a representative of the hundred. In early Anglo-Saxon days, there had existed the idea that the community and the individual should share alike in the initiation of criminal proceedings. The arrival of the Normans, the use of a strong king, a centralized government and courts, helped raise a new idea of the king as representing the state because he was concerned with crime and, especially, serious crimes, such as those constituting breaches of the King's peace.

The justice of the peace, therefore, was the keeper of the King's peace on the local level, and with time he became a better guardian of the peace than the grand jury.

In criminal matters, the justices at first adopted the machinery of the jury of presentment. However, they were not specifically directed as to what procedure they were to employ. In 1495, a statute of Henry VII permitted the justices and judges of assize to bring to trial persons accused of misdemeanors by way of information rather than indictment. In 1554, the justice was authorized to conduct a preliminary examination in all bailable cases, extended in 1555 to all cases where a person was committed. The proceeding at first was inquisitorial in nature, but by 1848, evolved into a judicial inquiry. It was this procedure that England in 1933 substituted for the grand jury. Professor Holdsworth states that the English, when comparing their system of criminal proceeding with European inquisitorial proceedings by the State, regarded the grand jury as the most valuable of the privileges that the common law had conferred on them. When in the 15th Century, certain civil law theories were extremely popular, Parliment regarded the grand jury as the only Constitutional method of criminal proceedings. In 1536, presentment was substituted for the civil law form of criminal proceeding in the courts of admiralty.

Yet, the factors which were to cause the downfall of the grand jury were at work. The justice of the peace had always been an effective investigator, prosecutor, and judge combined into one office. As he gradually lost his non-judicial functions and the lost duties were taken up by other more efficient bodies, it was realized that here existed a system of procedure that could supplant the grand jury. The jury of presentment considered few original matters. Their presentments were

[11] *Ibid.*, Vol. 1, p. 322.

made from information laid before them by the police force, which acted as the prosecutor. The accused had been held for their action by the judge, who obviously had already been convinced that probable cause existed.

The constables had long been in the habit of gathering information for the justices in the counties. In the cities, the general lawless state of affairs led to reforms. Conditions became so bad that no respectable citizen ventured outside his house at night without a strong bodyguard. To Sir Robert Peel in London goes the credit for establishing a paid body of men to protect the general public. The "bobbies" of 1829 were laughed at and derided, but their organization grew and soon commanded great respect. Other cities adopted his police system, and the constabulary and the city police laid a network of police throughout England.

The volume of the justices' work in the county was small compared with their work in the cities. The boroughs had usually appointed their town officials on the commission of peace as justices.

The paid magistrate, or stipendiary as he is called, has steadily increased in importance since 1748 when Henry Fielding, then Bow Street magistrate in London, was given a regular salary. They are fulltime judges appointed by the Crown on advice of the Lord Chancellor for life, and each must be a barrister of at least seven year's standing. The stipendiary is included on every commission of the peace within his area, and he has all the powers exercised by any two lay magistrates sitting as a court.

In London they are known as metropolitan magistrates, and they possess greater powers than other magistrates. They are also found in populous urban areas where there has been difficulty in finding lay magistrates. Both lay and stipendiary magistrates may be removed from office for misconduct.

With the stipendiary and lay justices and the police force, it became apparent that there was little the grand jury could do that these organs of government could not perform efficiently. Beginning in the early part of the 19th Century, agitation for reform of the grand jury started. For example, the grand juries themselves complained bitterly of their desire to be retired. The Middlesex grand jury in 1846, in its report, said that it felt it a duty it owed, not only to itself, but to the court, to offer a respectful representation of its utter uselessness. The grand jury usually approved only what was laid before it and seldom failed to find a true bill and never inquired beyond what was presented to it. The grand jury was sometimes referred to as the grand impediment. George A'Beckett writing in *The Comic Blackstone* in 1846 had this to say:

> An indictment must always be presented on oath of the grand jury whose grandeur is explained to them by the judge who says 'gentlemen, you are a very ancient body, you are as old as King Ethelred' but if they were told they were as old as Methusalah, they would be just as wise. They then hear the evidence which they generally get at by asking twenty questions at once, mistaking the beadle for the witness and examining the doorkeeper every now and then by way of change. If they think the accusation groundless, they write on the bill 'Not found' but they used formerly to endorse the word 'Ignoramus' which has been discontinued on account of its seeming to refer less to the bill then to themselves . . . [12]

The grand jury hung on despite efforts to abolish it. There was great comment pro and con for years. In 1885, and again in 1900, the historians Maitland and Pollack still approved the use of the grand jury. However, the beginning of the end was foreseen in 1917, when on April 2 the grand jury was suspended during World War I. Again, on December 23, 1921, it was restored to use. In a letter to *The Times* on July 13, 1933, Professor Holdsworth spoke out for the grand jury, saying it was still a real safeguard for the liberties of the subject. Finally, on September 1, 1933, the grand jury, as a part of criminal proceedings in England, was abolished. It is not completely gone, but it is callable only when needed in two jurisdictions. Though established in order to multiply criminal accusations, its chief function by a curious inversion came to be that of diminishing accusations. It came to do badly what was done well. The English comment on the use of the grand jury elsewhere is as follows: "We took a long time to perform the necessary operation on ourselves, so we must not be critical of other communities for delay, though it is an odd fact that more antiquated English legal procedure still survives in America than here."[13]

[12] Eleff, *Notes on the Abolition of the English Grand Jury*, 29 Journal of the American Institute of Criminal Law and Criminology 3-22, 1938.

[13] *Ibid.*

II. The Grand Jury In Maryland

A. HISTORICAL BACKGROUND

1. The Establishment of Judicial Power

The Charter of Maryland, issued on June 20, 1632, by Charles I of England to Cecil Calvert, Second Lord Baltimore, in the Seventh Section authorized the Proprietary in Maryland to ordain judges, establish courts, define their jurisdiction and the manner and form of their proceedings.[14] In addition to this specific grant of powers, the Charter conferred generally upon the Proprietor the rights and powers of a count palatine theretofore exercised in England by the Bishop of Durham in the Palatinate of Durham. Located in the northern part of England, on the Scotch border, the Palatinate was a kingdom of the Bishop within the kingdom of England. As a consequence, the Bishop possessed broad powers. The administration of justice and the appointment of judges was in his name and under his control.

Acting under the Charter granted him, Lord Baltimore dispatched two ships and colonists to settle his province in the New World. These first settlers reached Maryland in March of 1634 and established themselves at St. Mary's City. Arriving with these colonists was Leonard Calvert, the first Governor, a brother of Lord Baltimore. Upon organization of the colony, its affairs were conducted by Governor Calvert and an appointive Council, composed of gentlemen sent out from England by the Proprietary and several of the gentlemen already resident in the new colony.

In February of 1635, the Governor convened an Assembly for the province, composed of all the freemen of the colony. Laws were enacted at this meeting, but their text and the proceedings of the Assembly have become lost with the passage of time. At a later meeting of the Assembly beginning in January of 1637-1638, an act of attainder for William Claiborne was passed which contained a recital of an act passed February 26, 1635, which latter act apparently had provided that "offenders in all murthers and felonies should suffer such paines, losses and forfeitures as they should or ought to have suffered in the like crimes in England".[15]

The early years of the colony were spent in settling the dispute between the colonists and the aforementioned Claiborne. This man was a trader who had come from Virginia and settled on Kent Island under a royal license to trade with the Indians. Ultimately, he was ousted by Governor Calvert, still protesting his rights, and his settlement was taken over as part of the colony of Maryland. Upon a petition by Claiborne to the Crown in London, the right of Lord Baltimore to the land described in his Charter was upheld.

Under date of April 15, 1637, the Proprietor issued a new commission to Leonard Calvert, designating him as Chief Justice "to enquire hear determine and finally to judge . . . all causes criminal whatsoever . . . within our said province . . . (excepting only where the life or member of any person shall or may be enquired of or determine) . . ."[16] In cases involving life or member, they were to be heard and judged by the Governor and Council or any three of the Council, including the Governor. All causes and actions were to be determined according to the orders, laws and statutes of the Province and in default thereof, according to the laws and statutes of England, except that life or member were to be taken only by the law of the Province.

This commisison authorized Governor Calvert to call an Assembly of the freemen for the following January 25. This was the first assembly in Maryland for which we have a record of its proceedings. It consisted of one branch, composed of the Governor and his Council, the gentlemen of the province, the military commander of Kent Island, the officials and the freemen. The basis of representation at this Assembly was that of hundreds, St. Mary's, St. George's and Mattapany. The county was not yet formally in existence, although James Baldridge, who was present, was titled Sheriff of St. Mary's County.

Among the actions of this assembly was the trial of Thomas Smith, Ratcliffe Warren and others growing out of the Claiborne affair, which will be described later. The Governor presented to the Assembly forty-two laws prepared by the Proprietary in England, but none passed, the Assembly claiming the right to initiate legislation. There was passed only one act, that previously referred to, providing for the attainder of William Claiborne.

At the next session of the Assembly in 1638-1639, thirty-six bills were introduced by the members of the Assembly, but no bills were approved by the Governor.

[14] Maryland Manual, 1957-1958, p. 381.
[15] Archives of Maryland, Vol. 1, pp. 83-84.
[16] Archives, *ibid.*, Vol. III, p. 53; Vol. XLIX, p. viii.

Among the legislation introduced were four bills to establish the court system of the Province, composed of county courts, a Court of Chancery, a Court of Admiralty and a Praetorial Court. The jurisdiction of the county courts was to have been broad, similar to the common law courts of England. Their criminal jurisdiction was to extend to incest, matrimonial causes, defamation and statutory crimes, excepting felonies and treason. Trial of all enormous crimes, treason and felony was to be held before the Praetorial Court, composed of the Governor and Council. The justice of the peace was provided for, with power extending criminally to cases of assaults, swearing, drunkenness, fornication, adultery, Sunday crimes, discharging of firearms, etc. Those crimes that constituted felonies were enumerated, and the penalty was specified, likewise for enormous offenses.[17] In criminal cases presentment by the "grand enquest" to be composed of at least twelve jurymen was provided.[18]

Only one bill was passed at this session, that "ordeining certain laws for the Government of this Province." It was provided that the Governor and the Commander of Kent Island should use all power necessary to keep the peace and should try and sentence all offenders with what punishment fitted the crime, except that in crimes affecting life or member there should first be an indictment and later trial by at least twelve freemen.[19]

Finally, in 1642, a number of bills were passed which related to the judicial process in Maryland. One entitled "An Act for Rule of Judicature," provided that in criminal cases all crimes and offenses should be judged and determined according to the law of the Province or if there were no law, as close as may be to English custom in like cases.[20] No person was to be adjudged of life or member unless by the law of the Province. There were other acts enumerating what were capital offenses and listing certain other crimes, in each act specifying the penalty therefor. Another act provided for trial by jury in all cases, including criminal cases.

2. The Courts of the Province

There had existed in the Province from its earliest days a court called variously "the court"[21], "the County General Court"[24]. It was not, at its inception, a Court"[22], "the Provincial Court"[23] and much later "the formal court, but in its earliest form as the sittings of the Governor and his Council when transacting the ordinary business affairs of the province, it gradually developed into a legal court. When so transacting legal matters, the Governor acted under the terms of the charter, which reserved the administration of justice to the Proprietor. The Court sat in or near St. Mary's City at three regular sessions annually.

As the changes in its name indicate, this was the only court of the Province for a few years. But with the issuance of a commission for Kent Hundred and its creation as a county, the court became the highest court of the Province as well as the local court for St. Mary's Hundred. It then assumed the name of the Provincial Court. Upon the issuance of another commission of the peace, for St. Mary's and later for other counties, the court in fact became a Provincial Court.

The original jurisdiction of the Provincial Court extended to all crimes, punishable by loss of life or member. The county courts, to be mentioned next, had jurisdiction over the minor criminal offenses. The Provincial Court could assume jurisdiction in such minor cases which would ordinarily have come up in a county court, especially where the cases originated from St. Mary's or Calvert counties. Such cases as bastardy, trivial assault, fighting and quarreling, malicious damage of property, and women charged with loose living therefore appear in the records of the Provincial Court.[25]

All the judicial business of the province was brought in the Provincial Court prior to 1650, due most likely to the small population of the colony. The only violent crimes in the records of the Court from 1634 to 1650 were two homicides and one unproved battery[26].

During the period 1650 to 1657 there were again only two homicides reported in the Court's proceedings.[27]

Cases ordinarily cognizable only in the Provincial Court during the period 1660-1670 included the following: murder, rape, hog-stealing and other forms of theft, barratry, misdemeanors, and contemptuous speaking.[28] Fourteen cases of murder were heard by the Court during this period of time.

During the two-year period from 1670 to 1671 the Court appears from its proceedings to have heard only criminal cases. The cases heard included these felonies and misdemeanors: murder, petty treason, burglary, theft, assault and battery, keeping an unlicensed ordinary, and the altering of cattle marks.[29]

As the province of Maryland grew and expanded, it

[17] *Ibid.*, Vol. 1, pp. 46, 47, 49, 50; Vol. XLIX, p. ix.
[18] *Ibid.*, Vol. LIII, p. xviii.
[19] *Ibid.*, Vol. I, pp. 83-84; Vol. XLIX, p. ix.
[20] *Ibid.*, Vol. I, p. 147.
[21] *Ibid.*, Vol. XLIX, p. viii (1634-1638).
[22] *Ibid.*, Vol. IV, p. 21; Vol. XLIX, p. ix (1638-1640).
[23] *Ibid.*, Vol. XLIX, p. ix (about 1640-1642; see generally Vol. XLIX, pp. ix-x, Vol. I, p. 147.
[24] *Ibid.*, Vol. LVII, p. xiii (1777-1805).
[25] *Ibid.*, Vol. LVII, pp. xv, xxv.
[26] *Ibid.*, Vol. IV, preface.
[27] *Ibid.*, Vol. X, p. v.
[28] *Ibid.*, Vol. LVII, p. xxv.
[29] *Ibid.*, Vol. LXV, p. xviii. For a description of a typical murder case of this era, see pages 2 to 5.

became inconvenient to try criminal cases in the Provincial Court. It sat at or near St. Mary's City until 1694, when the government was moved to a more central location at Annapolis. Still, Annapolis was not convenient to all. Governor Seymour and his Council in 1707-1708 recommended a series of itinerant justices for Maryland such as were used in England. They were to hear and try criminal cases throughout circuits on the Eastern and Western shores, holding assizes twice a year. The Lower House of the Assembly objected to this arrangement, preferring to vest power to try such cases in the county court justices. The Governor then went ahead with his plan and appointed four judges to hear criminal cases.

After much dispute, a compromise was agreed upon in 1723 and two judges of the Provincial Court were appointed to hear various causes for each side of the Bay. These judges were to associate with themselves justices up to the number of three from the counties. These judges were to act as justices of assize, oyer and terminer and gaol delivery. This practice was continued until 1769.

A few years thereafter, the County Courts by an Act of 1773 were given concurrent jurisdiction with the Provincial Court. This change meant concurrent jurisdiction in criminal cases, as for some years the civil jurisdiction of the two courts had been almost identical.

The development of local courts began with the issuance in 1637 of a commission to Captain John Evelyn as military commander of Kent Hundred. The Commission authorized the holding of a court and the determination of such criminal cases as might be heard by justices in England in their Court of Sessions, not extending to life or member.[30] This commission was much broader in scope than the one next issued for St. Mary's County, probably due to the distance of Kent Island from the seat of government at St. Mary's City.

Later, after an expedition led by Governor Calvert had subdued the island, the Governor left a commission with Robert Philpott, William Coxe and Thomas Allen granting criminal jurisdiction similar to the grant to Evelyn. In 1638, and continuing until 1642, a succession of commissions was issued to William Brainthwaite, Giles Brent, and several others. The record of the actual creation of Kent as a county has been lost, but it appears from contemporary accounts that it was accorded such status between 1640 and 1642.

On January 24, 1638, a commission was granted to John Lewger as Conservator of the Peace for St. Mary's, with power and authority as might be or usually was exercised by a single justice of the peace in England under his commission.[31] Shortly thereafter, a commission was granted to James Baldridge as sheriff of St. Mary's. These acts apparently mark the beginning of St. Mary's as a county.

The Court sitting at St. Mary's, which was to become known as the Provincial Court, acted both as a Provincial Court and as the local court for St. Mary's until 1644, when on August 20, commissions were granted to William Brainthwaite, Thomas Green and Cuthburt Fenwick as commissioners for the county. They were authorized to determine "all criminal causes not extending to life or member in our said county arising or pleadable by the Law of this Province before the Commander and Commissioners of a County . . ."[32].

The next commission for St. Mary's was that issued by the Provincial Court sitting on April 24, 1655, when Captain John Sly was appointed President of the County Court with six associate justices. It by that time probably had the same jurisdiction and authority as the other county courts possessed.[33]

Similar commissions were issued upon the creation of the other counties: Anne Arundel in 1650, Calvert (Patuxent) in 1654, Charles in 1658, Baltimore in 1660, Talbot in 1662, Somerset in 1665, Dorchester in 1668, Cecil in 1674 and Prince George's in 1695. In the Charles County commission the justices were to "inquire into felonies, witchcraft, magic arts etc., and all offenses which justices of the peace in England may or ought lawfully to inquire into, but proceed not in any the cases aforesaid to take life or member; but that in every such case you send the prisoners with their indictment and the whole matter depending before you to the next Provincial Court to be holden for this our Province. . ."[34]

The justices or commissioners were selected by the Governor from among the most prominent men of the several counties and their powers were defined and limited in their commissions issued to them. They held office during the pleasure of the Governor. The number of justices on a commission varied, usually from six to ten, the commission reading that at least one of the first three or four named must be present to constitute a quorum of the court. In their judicial capacity they were empowered to hear cases not involving loss of life or member. Felonies and other serious criminal offenses punishable by death or maiming were sent at once to the Provincial Court for trial. Meetings of their courts were fixed by statute, generally there were five or six sessions a year.[35]

There was in colonial days another level of courts,

[30] *Ibid.*, Vol. III, p. 59; Vol. XLIX, p. viii.
[31] *Ibid.*, Vol. III, pp. 60-61; Vol. XLIX, p. viii.
[32] *Ibid.*, Vol. III, pp. 150-151; Vol. XLIX, p. x.
[33] *Ibid.*, Vol. IV, p. 413; Vol. XLIX, p. xi.
[34] *Ibid.*, Vol. III, p. 341; Vol. LIII, p. lxvi.
[35] *Ibid.*, Vol. LIII, p. xviii.

the manorial courts. This was the court held by the lord of a manor under the authority contained in the patent granting to him a large holding of land. Two such manor courts are known to have existed in Maryland, one at St. Clement's Manor, erected in 1639, and the other at St. Gabriel's Manor, erected in 1641 and both located in St. Mary's County. Actually two courts were held, the court leet for servants and indentured persons, and the court baron for freemen. The power of the manorial court was necessarily small, extending in criminal cases to violations of the peace punishable by fine and to violations of fish and game laws and other regulations of the manor. The manorial courts disappeared about 1672, their jurisdiction having been taken over by the County Courts.[36]

3. Colonial Criminal Procedure

The first reference to a grand jury in the Provincial Court occurred on February 12, 1637. The sheriff of St. Mary's County returned a panel of twenty-four freemen for the Grand Inquest. These men were sworn and selected Marmaduke Snow as their foreman. They were then charged as to their duty "to enquire and true presentment to make of all such bills as should be given them in charge in behalf of the Lord Proprietor according to the evidence".[37] The Attorney General of the Province laid before them two cases of piracy against the forces of William Claiborne. One charge grew out of a battle between a ship of Claiborne's and one commanded by Thomas Cornwaleys (Cornwallis) in the Pocomoke River, and the other concerned a naval battle in the Wicomico River, both in 1635. A true bill was returned in both cases.

Thereupon, the Court found itself in a dilemma. The crime of piracy was one punishable by loss of life or member. As such, it could be tried only by the Governor and Council and punished according to the law of the Province. However, there was at that time no law in the Province relating to piracy. The situation was resolved by trial before the Assembly, and the offenders were sentenced to be hanged.[38]

This earliest grand jury in the Provincial Court records had twenty-four members. Grand juries used in this court during the period from 1640 to 1650 apparently had only twelve jurors.[39] In the county courts and sometimes in the Provincial Court during the period 1650 to 1655 the usual method of presentment of criminal cases appears not to have been by way of indictment, but by information or presentment to the court by a justice, constable or the sheriff. The lack of use of the grand jury may have been due to the expense of impanelling.[40] No law prior to that of 1666, which is mentioned later, is known to have required regular callings of a grand jury in the province.

Grand jurors for use in the Provincial Court up to 1666, though representing the entire province, were in practice called entirely from St. Mary's County. During the course of exchange of a petition in 1662 from the Lower House of the Assembly to the Upper House protesting placing the complete burden of jury service on the local people, the Upper House declared that by the law of England each county ought to impanel a grand jury quarterly. The county courts apparently ignored the law of England for a few more years. As a result, though, of the Lower House's petition, some jurors were called from counties other than St. Mary's.[41]

The customary procedure of trial at this time (1666-1670) seem to have been in the case of felonies, particularly murder, as follows: After a finding by a coroner's jury, the sheriff called the grand jury to meet in the Provincial Court, the names of the foreman and the other jurymen were read, the attorney general of the Province presented the accused to the grand jury, which then returned the charge guilty or not guilty. The accused then made his plea to the indictment, chose trial either by the petit jury (which if required was then selected) or by the court. The trial followed, the jury rendered a verdict, which was announced by the court and the sentence followed.[42]

Thus by 1670 it had become indispensable to have the indictment of a grand jury in a criminal case.[43] The records of the Provincial Court for the period 1675-1677 reveal no cases of a criminal nature, and it appears that no grand juries were summoned for use in that court.[44]

Grand jury service in the county courts was regulated by the "Act against Hog-stealers" which passed at the 1666 session of the Assembly. Every county court held twice yearly in March and November was required to inquire by a grand jury of all offenses committed against this and all other good laws of the province. The sheriffs were required to impanel the jurors, who were to examine all the constables for the discovery of offenders and it was directed that all presentments that concern life or members be returned by the county clerk

[36] *Ibid.*, Vol. LIII, pp. lxi-lxv.

[37] *Ibid.*, Vol. IV, pp. 21-22; Vol. LIII, p. xviii.

[38] *Ibid.*, Vol. XLIX, p. viii. The General Assembly as a whole sat as a court of law, though infrequently, until as late as 1649.

[39] *Ibid.*, Vol. IV, pp. 237, 240, 241, 260, 447. The number of grand jurors for the period 1666-1670 varied from fourteen to twenty-two. See Vol. LVII, p. xxvi.

[40] *Ibid.*

[41] *Ibid.*, Vol. LIII, p. xix.

[42] *Ibid.*, Vol. LVIII, pp. xxv-xxvi.

[43] *Ibid.*, Vol. LXV, p. xviii.

[44] *Ibid.*, Vol. XLVI, p. xv.

to the next Provincial Court. The Archives state that from this date, there were held regular meetings of the grand jury.[45]

The earliest reference to the use of a grand jury in Charles County dates from the year 1662, in Somerset County from 1666, Talbot County from 1671 and Kent County from 1675.[46] The exact amount of use of the grand jury in these early county courts is difficult to determine, since the records have been lost in all but four counties.[47]

In one of the counties whose records have survived, it appears that during the period 1666-1674, the court met for fifty-five sessions. Reference to a grand jury appears in only six of these sessions. There is no reason to believe that the court failed to comply with the 1666 act, but there is some belief that the omission is due to mere carelessness of the clerk keeping the records.[48]

The 1666 act did not fix the number of jurymen to serve on the grand juries to be called thereunder and the number actually serving appears to vary in an arbitrary manner. In one case as few as four jurymen were called, in other cases as many as nineteen.[49]

By the year 1670 there seem to be three well established methods of initiating criminal actions in Colonial Maryland. These are the same three methods that are in use today. They are:

1. Indictment, voted by the grand jury after the attorney general had laid the accusation before them.
2. Presentment by the grand jury itself without any bill of indictment by the government.
3. Information filed by some officer of the government, without the intervention of the grand jury.[50]

4. Criminal Jurisdiction Under Constitutional Government

Maryland's first Constitution abolished the Provincial Court and created in its place a General Court, consisting of three judges, with meetings on each shore twice yearly.[51] The county courts were referred to indirectly and they were not changed by the Constitution.[52] The Acts of 1777 implemented the 1776 Constitution by providing that seven jurors be selected from each county for jury service before the General Court, three to be grand jurors and four to be petit jurors.[53] By Section 9, the county courts were authorized to be held as previously directed by law.[54]

Now that the General Court and the county courts possessed concurrent jurisdiction, consideration was given to localizing the trial and conduct of criminal cases. For example, in 1785 it was provided that the county court justices should have the power to try all persons and give judgment accordingly, except in cases specifically directed by law to be tried in the General Court.[55] Capital cases, punishable by an infamous sentence, could be removed to the General Court upon application to it.

The Acts of 1790 provided that only the following criminal cases could be heard in the General Court: treason, misprison of treason, murder, felonies, and insurrection.[56]

In 1804 a revision of the judiciary of the State was undertaken, which was confirmed in 1805, amending the 1776 Constitution.[57] The General Court and the county courts were abolished. The state was divided into six judicial districts, and the appointment of three judges in each district was provided, one to be chief judge and the others to be associate judges. These three judges formed the county court for each county within the district. The jurisdiction of the circuit court extended to the same powers that the county courts then had. A Court of Appeals composed of the Chief Judges of the districts was created, with the same jurisdiction as the previous Court of Appeals and the appellate jurisdiction of the General Court.

The Constitution of 1851 redistricted the circuit courts, altered the Court of Appeals and established Baltimore City courts. However, the jurisdiction of the circuit courts was not changed.[58] The appointment of justices of the peace was provided, to have such duties as then existed or as might be provided by law.[59]

The Constitution of 1864 again redistricted the circuit courts. They were to have the same jurisdiction that they had had for some time under previous Constitutions.[60] There was also another provision for the appointment of justices of the peace.[61]

In the original draft of our present 1867 Constitution Section 20 of Article IV, Judiciary Department, contained the same language as that in Section 25 of the 1864 Constitution, authorizing circuit courts in each county of the State with the jurisdiction then possessed or as might be granted to them by law. By Sections 42 and 43 the appointment of justices of the peace was

[45] *Ibid.*, Vol. LIII, p. xix.
[46] *Ibid.*, Vol. LIII, pp. xxix-xx.
[47] *Ibid.*, Vol. LIX, p. xiv. Kent, Charles, Somerset, and Talbot counties.
[48] *Ibid.*, Vol. LX, p. xxiii.
[49] *Ibid.*
[50] *Ibid.*, Vol. LXV, p. xviii.
[51] Constitution of 1776, Article 56.
[52] *Ibid.*, Article 47.
[53] Chapter 15 of 1777, Sec. 10.
[54] *Ibid.*, Sec. 9.
[55] Chapter 87 of 1785, Sec. 7.
[56] Chapter 50 of 1790.
[57] Chapter 55 of 1804, Chapter 16 of 1805.
[58] Constitution of 1851, Art. IV, Secs. 1, 8.
[59] *Ibid.*, Art. IV, Sec. 19.
[60] Constitution of 1864, Art. IV, Sec. 25.
[61] *Ibid.*, Art. IV, Sec. 47.

required with such jurisdiction as had been theretofore exercised or as should be thereafter prescribed by law. These sections have not been amended since inserted originally in the Constitution of 1867.

The Code of Public General Laws of 1888, which was legalized, rather than being made evidence of the law, contains provisions relating to the circuit courts that are identical with those in the present Code of Public General Laws.[62] The Circuit Courts were stated to be the highest common law courts of record, each having full common law powers and jurisdiction in all civil and criminal cases (except where by law the jurisdiction has been taken away or conferred upon another tribunal), and all additional powers and jurisdiction conferred by the Constitution or by law.

"It has always been recognized that the jurisdiction of justices of the peace in Maryland is a special one created by statute. Prior to 1880 justices had no criminal jurisdiction in this State except such as was conferred by the statute which created the offense and imposed the penalty. Criminal charges which the statute did not specifically authorize justices of the peace to try and determine could be heard only in the criminal court (circuit court) after indictment by the grand jury."[63]

Certain criminal jurisdiction was bestowed on the justices of the peace in eighteen counties of the State in 1880.[64] One county was eliminated from the act a few years later.[65]

In 1890 criminal jurisdiction was shared with all justices of the peace in the counties, excepting only those in Baltimore City.[66] Justices were granted, in addition to their other jurisdiction, concurrent power with the circuit courts in the following cases: assault without felonious intent, all cases of assault and battery, petit larceny up to $5.00 in value, all misdemeanors not punishable by confinement in the Penitentiary and jurisdiction in all cases punishable by fine or imprisonment in jail or the House of Correction. The justices were allowed to sentence in such cases as the circuit court could sentence. It was further provided that any case could be removed to the circuit court for trial if a jury trial were prayed.

The 1890 statute has since been amended[67] and now in its present form provides that the justices' (now called trial maistrates') criminal jurisdiction extends to all cases not punishable by confinement in the Penitentiary or not involving a felonious intent.[68]

The jurisdiction of Baltimore City police magistrates is different from that of the county magistrates. Their jurisdiction in criminal cases extends to certain statutory crimes involving tramps, vagrants, beggars and vagrant children, to cases of cruelty to animals, malicious destruction of property and concealed weapons. Also included is the trial of all cases of assault and battery (with the limitation that in such cases no more than $100 in fine nor more than one year's sentence may be imposed); violation of laws and ordinances punishable by fine only not exceeding $100; violations of laws as to hawkers and peddlers; indecent exposure; Sunday laws and disturbances of the peace.[69] If a jury trial is requested, the case will be removed to the Criminal Court of Baltimore City for trial.

All cases which are not enumerated above are presently cognizable only in the Circuit Courts of the counties or the Criminal Court of Baltimore City.

Maryland has never authorized any method of initiating criminal prosecutions other than by way of indictment by the grand jury, except that originally enacted in 1933[70], which allows the State's Attorney to file an information charging an accused, provided the accused has first signed a waiver of his right to indictment.[71] This procedure may be used except in Baltimore City and Baltimore County. The section as originally enacted applied to misdemeanors only and could be used when the accused desired to plead guilty to a charge. It was inapplicable to misdemeanors punishable by death, and did not affect the powers of justices nor those of the grand jury to act regardless of the statute. As it was amended in 1945, the requirement of a guilty plea was eliminated, and the section was broadened to make it applicable to felonies. Baltimore City and Baltimore County were still exempt.[72]

Baltimore City still has no comparable statute. However, in Baltimore County, the local code allows prosecution of all offenses, except felonies, by information filed by the State's Attorney on order of the Court.[73] A law similar to the Baltimore County statute was enacted for Prince George's County in 1951.[74] However, this statute would seem to be superseded by the provision in the Annotated Code, which is applicable to Prince George's County, and which has a broader scope than the local law.[75]

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[62] Code of 1888, Art. 26, Sec. 36; Annotated Code of Maryland (1957 Ed.), Art. 26, Sec. 30.
[63] Yantz v. Warden, 210 Md. 343 at p. 348, 123 A. 2nd. 601.
[64] Chapter 326 of 1880.
[65] Chapter 510 of 1884, Frederick County.
[66] Chapter 618 of 1890.
[67] See Chapters 475 of 1906, 689 of 1941, and 845 of 1945.
[68] Annotated Code of Maryland (1957 Ed.), Art. 52, Sec. 13 (a).
[69] Charter and Public Local Laws of Baltimore City (1949 Ed.), Sec. 410, as amended by Chapters 296 of 1955, and 555 and 574 of 1957.
[70] Chapter 562 of 1933.
[71] Annotated Code, *op. cit.*, Art. 27, Sec. 592.
[72] Chapter 788 of 1945.
[73] Code of Public Local Laws of Baltimore County (1955 Ed.), Sec. 579.
[74] Code of Public Local Laws of Prince George's County (1953 Ed.), Sec. 1414.
[75] Annotated Code, *op. cit.*, Art. 27, Sec. 592.

B. STATUTES AFFECTING THE GRAND JURY

In Maryland, the term of the grand jury is co-extensive with that of the Court appointing it. In the counties, it may sit for the entire term of court, but since there is seldom that much criminal business, it usually meets at the beginning of the term and then recesses, subject to recall.[76] In Baltimore City there are three grand juries annually, each sitting for four months.

Grand jurors have by statute the same qualifications as petit jurors.[77] The age limits for jury service are from twenty-five to seventy. Certain persons, such as Orphans' Court Judges, are not eligible for grand jury duty. Other persons are exempt from jury duty, such as school teachers, members of the General Assembly, constables, members of the militia, ministers and persons having any interest in a matter pending before the grand jury. No property qualifications is required and no religious test, except that there must exist a belief in God in order to receive the oath that must be administered.[78] Women are expressly declared eligible for jury service in almost all counties.[79]

Selection of jurors in the counties is made according to law by lot drawn from jury lists.[80] In Baltimore City, another method has grown up out of the custom of the Supreme Bench judges making up their own list of qualified jurors. This point will be discussed further in Section III of the report.

Apparently the grand jury in Maryland has plenary power. However, it seldom exercises anything more than its routine power of approval or disapproval of those matters laid before it. The grand jury existed before the State's Attorney, and therefore it has always had the power to initiate its own investigation of any matter. Formerly it did so, even making the accusation itself. Now it acts as little more than an approving body. It may still disapprove a bill or ignore an indictment but this is about the limit of its independent inquiry. For this reason there is said to be serious doubt as to whether the grand jury performs any useful duties today.

In an interesting Maryland case on grand jury powers, the final report of the grand jury, as handed to the judge, included a report from a special committee of the grand jury.[81] The special report was an investigation of a new school building, and the report without making a criminal charge, merely criticized the actions of certain public officials involved in the construction of the building.

The public officials involved petitioned to expunge the committee report from the court records, on the ground that the report exceeded the powers of the grand jury. The Court of Appeals held that the power of the grand jury is plenary, but it is confined to investigations of violations of the criminal law. Where the report contained criticism only, and no violation of law could be found, the report exceeded the powers of the grand jury. It has been the custom of the juries to report on general conditions, but such comments must not single out individuals as objects of public criticism. The court ordered the entire committee report deleted from the records of court.

A similar situation recently arose in Washington County with the same result as the above case.

By statute, the various grand juries have certain duties, relating mainly to inspection of county buildings and State penal institutions.[82] Examination of the table of grand jury reports in the Appendix will show the extent in some counties to which this inspection is carried, and that in other counties it is relatively little used.

The pay of a grand juror is regulated by law and now varies as follows: $5.00 per day in six counties, $6.00 per day in one county, $7.50 per day in nine counties, $8.00 per day in two counties and a high of $10.00 per day in two counties. In Baltimore City, they receive such pay as is provided for in the annual budget. In Baltimore County the amount is set by the Judges of the Circuit Court ($10.00 per diem at present), and it is fixed in the county budget in Montgomery and Prince Georges' Counties.[83]

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[76] Annotated Code, *op. cit.*, Art. 51, Sec. 28.
[77] See generally, Annotated Code, *op. cit.*, Art. 51, Secs. 1, 2, 3, 4, and 5.
[78] Constitution of 1867, Declaration of Rights, Art. 36.
[79] Annotated Code, *op. cit.*, Art. 51, Sec. 8.
[80] Annotated Code, *op. cit.*, Art. 51, Sec. 10.
[81] In re Report of the Grand Jury, 152 Md. 616, 137 A. 370, 1927.
[82] Annotated Code, *op. cit.*, Art. 27, Sec. 702; Art. 51 Sec. 27.
[83] Annotated Code, *op. cit.*, Art. 51, Sec. 25.

C. CRIMINAL PROCEDURE IN MARYLAND

At common law, there was a dividing line between indictment and some other form of accusation, at the line between felonies and misdemeanors. In actual practice in Maryland, there is provision for use of a criminal information in the counties.[84] Baltimore City has held to almost complete use of the indictment. It was not a common law requirement that misdemeanors be prosecuted by indictment. For the purposes of this report, a typical Baltimore City criminal proceeding is outlined.

First, the warrant issues from the police magistrate assigned to the station house upon application of an officer, as a result of suspicion of a crime or from his own knowledge, depending on the crime involved. This excludes cases where the offense is committed in the presence of the officer and he arrests without a warrant. The warrant is then served on the accused who must report for a hearing before the magistrate. Here, the accused has the right to counsel and to produce witnesses. If the magistrate finds probable cause for the arrest, he sends the case to the grand jury for consideration. The accused furnishes bail, if required, and is released until his case comes up on the grand jury docket.

Before the grand jury, exactly the same procedure is undergone and for the same purpose, that of ascertaining whether probable cause exists to send the case to the Criminal Court for trial. The grand jury consideration is, it is true, a secret proceeding, and only the witnesses summoned by the State's Attorney are heard. Counsel for the defendant is not present. Upon the evidence heard, the grand jury finds either a true bill, in which event the case is referred to the Criminal Court for trial, or fails to find a true bill, which ends the case.

Again the accused furnishes bail, in bailable cases, and is released until arraignment in Criminal Court. This merely consists of taking the plea of the accused to the charge. At a later date, the case finally comes to trial, and the witnesses and the story of the crime are heard for the third time. At the conclusion of the trial, the accused may then know whether he is guilty or innocent of the offense charged.

III. The Grand Jury Outside Maryland

Maryland may be said to be one of the remaining strongholds of the original grand jury system. By original grand jury system is meant the grand jury as it existed in England at its prime. There have been some improvements on the grand jury in this country, some variations of it and complete substitution of it with other systems.

1. ENGLAND

The Administration of Justice (Miscellaneous Provisions) Act of 1933 terminated the English grand jury system. The grand jury meets only in the counties of Middlesex and London to hear cases of treason and felonies committed abroad, including offenses under the Official Secrets Act. Otherwise, there is no more grand jury, its place being taken by the information proceeding and a hearing before the magistrate. A private bill of indictment may be preferred under certain circumstances.

2. NEW YORK

New York State has retained the grand jury system. By statute it has authorized a special grand jury panel in certain counties of the State, comparable to the special jury panels used for the selection of petit jurors. The latter jury is the so-called "blue ribbon jury." The use of special panels for petit juries was first authorized more than fifty years ago in New York, and, despite attacks upon it, its validity has been consistently upheld by the New York courts.[85] Recently the use of such juries was attacked under the Federal Constitution, but the Supreme Court held that such panels constituted neither a denial of due process nor of equal protection of the laws.[86]

In criminal cases the New York law provides, in counties within the city of New York, for the selection of a special grand jury panel. From the list of persons qualified to serve as petit jurors, the county clerk is required specially to investigate these persons. Each

[84] Annotated Code, *op. cit.*, Art. 27, Sec. 592.

[85] McKinney's Consolidated Laws of New York, Vol. 29, Judiciary Law, Sec. 749aa.

[86] Fay v. People, 332 U. S. 261, 67 S. Ct. 1613, 1947.

juror must be fingerprinted, and his fingerprint record is then sent to the Central Bureau of Criminal Identification for comparison with its records. A report is made to the clerk of the Bureau's findings. The clerk, in case there are any records returned indicating convictions for felonies or misdemeanors involving moral turpitude, reports such records to the district attorney for appropriate action. Such persons are then omitted from the special panel. The clerk then makes up a list of jurors from those persons who are suitable to serve as grand jurors. Grand jurors for use in the various criminal courts are drawn from the special panel as required. A county jury board is authorized to fill any vacancies in the grand jury panel or to add additional names to the panel.[87]

This appears to be the only area of the State wherein a special grand jury panel is authorized. In counties outside cities with a population of over one million, selection of the grand jury is by drawing, similar to all such drawings.[88]

In any criminal case, upon application of either the defendant or the State, the Court may order, in its discretion, upon a proper showing therefor, the trial to be held before a special petit jury.[89]

The work of grand juries in New York both in the State and the Federal Courts has been outstanding. In 1907, certain New York citizens organized a grand jury association for the purpose of better informing grand jurors of their powers and duties.[90] Since 1927, the association has published a bulletin entitled *The Panel* devoted to grand jury reforms and matters of interest to grand jurors. *The Panel* lists similar grand jury organizations in New Jersey, Pennsylvania, Ohio, Texas and California, and Federal Grand Jury Associations for the Southern and Eastern Districts of New York.

3. MICHIGAN

This state was one of the pioneers of grand jury reform. The Michigan Constitution of 1850 omitted any reference to the grand jury. In 1859 an act of the legislature provided that a grand jury should not be called unless so ordered by a judge.[91]

In 1917 an act was passed which has since become unique in grand jury reform. This is the so-called "one-man grand jury." Any judge of a court of record before whom the prosecuting attorney or the attorney general applies, or to whom any complaint on information or belief is made that there is probable cause of the commission of any criminal offense within the jurisdiction of the court and there are witnesses who can testify to the offense, may order an inquiry into the offense to be made, and to conduct such inquiry himself. Witnesses may be subpoenaed to appear before the judge to testify thereto.[92]

Where the judge finds probable cause that any person may be guilty of a crime, he issues process for the arrest. A preliminary examination is held and the person is proceeded against in the usual way by information.[93]

The examination by a circuit judge, as authorized by statute, in regard to crimes committed within the circuit court's jurisdiction, is similar to that of the grand jury and is popularly called a "one-man grand jury" proceeding.[94] The function of a one-man grand jury is to determine whether there is probable cause to suspect that any crime, offense, misdemeanor, or violation of city ordinance has been committed within the jurisdiction of the judge or justice acting as a one-man grand jury.[95]

The so-called "one-man grand jury" has been held valid by the Michigan courts on many occasions.[96] Also it has been held that the one-man jury statute did not repeal by implication other provisions of law for the calling of a grand jury.[97]

The original act was drafted by the Bar Association of Michigan and has withstood challenge for better than forty years. A similar procedure exists in only one other state.[98] In most Michigan counties, it is said no person now living can remember the calling of a grand jury.

4. THE INFORMATION STATES

From the table in the Appendix, twenty-three states and jurisdictions permit the use of the information for any crime, small or serious. Some of these states have completely abolished the grand jury. In other states, it is subject to call upon order of the court on its own motion or on that of the prosecutor or district attorney. In practice though, grand juries, where still permitted,

[87] McKinney's Laws, *op. cit.*, Vol. 29, Sec. 609.
[88] McKinney's Laws, *op. cit.*, Vol. 29, Sec. 684.
[89] Fay v. People, *op. cit.*
[90] *Note on Private Communications with Grand Juries,* 38 Journal of Criminal Law 47, 1947.
[91] Michigan Statutes Annotated, Vol. 25, Sec. 28.947.
[92] *Ibid.*, Vol. 25, Sec. 28. 943.
[93] *Ibid.*, Vol. 25, Sec. 28. 944.
[94] *Ibid.*, Vol. 25, p. 343, see In re Slattery, 310 Mich. 458.
[95] *Ibid.*, Vol. 25, p. 344, see Hemans v. U. S., 163 F. 2nd. 228.
[96] *Ibid.*, Vol. 25, p. 343, see People v. Hancock, 326 Mich. 471.
[97] *Ibid.*, Vol. 25, 1957 Supp., p. 14, see People v. Pichitino, 337 Mich. 90.
[98] Connecticut. See note in 26 Journal of the American Judicature Society 79; also General Statutes of Connecticut, 1949, Sec. 8777, 1955 Supp. to 1949 Statutes, Sec. 3324d.

are seldom called, and when they are called, it is usually to inquire into some political matter, rather than to make a criminal accusation.

The usual procedure under the information system is the issuance of a warrant by a magistrate or justice upon a sworn complaint. A preliminary hearing is then conducted before the magistrate or judge, to which the accused can summon witnesses in his behalf. After the examination, the magistrate certifies that there is, or is not, probable cause of the commission of a crime. If probable cause is certified, the district attorney or public prosecutor prepares and files an information in the criminal court possessing jurisdiction, and the case proceeds to trial on the facts.

All but one of these twenty-three states, it will be noted, are either west of the Mississippi River or are commonly considered as northern central states, and they are not, therefore, possed of the broad common law heritage found in Maryland. The only western state that might be expected to use the information widely but which apparently does not is Oregon, which seems still to use the grand jury system.

Those states in the eastern half of the United States which have, like Maryland, the common law background, generally require the use of the indictment in the more serious criminal cases. The information may be used in other cases, and some eastern states are making a greater use of the information than other states.

5. STRICT USE OF THE INDICTMENT

The state which appears to make much use of the grand jury is Tennessee. There, by Constitutional requirement, all criminal charges must be prosecuted by means of the indictment or presentment.[99] Case law has interpreted the words "criminal charges" not to include certain misdemeanors, which under the small offenses law may be summarily disposed of by a magistrate. However, the penalty under the small offense law is limited to a maximum of $50 in fine.[100] The state also has a waiver of indictment statute, but again where the penalty is a fine of not over $50.[101] South Carolina is not far behind. Indictment is required for an offense except those punishable by a fine up to $100 or imprisonment up to 30 days.

6. THE UNITED STATES

The Federal Constitution places the United States in the prosecution of criminal offenses in the position of the common law states. By the Fifth Amendment, the use of the indictment is required in offenses punishable by death or an infamous sentence. An infamous crime has been held to be one punishable by a sentence of imprisonment for more than one year. By statute, all offenses punishable by death or imprisonment for more than one year are defined as felonies, and all other offenses are misdemeanors.[102]

The Federal Criminal Rules permit infamous crimes or those punishable by hard labor to be prosecuted by information, if the accused, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment.[103] For misdemeanors and petty offenses, the information is used.

IV. Revision of the Grand Jury

A. INTRODUCTION

While Marylanders scarcely know of any method of criminal prosecution other than the indictment returned by a grand jury, citizens of other states have seldom, if ever, heard of a grand jury. Maryland law is formed out of the common law of England. Yet this statement by itself offers no explanation for this state's continued use of the grand jury. England, out of whose common law the grand jury originated, has since abandoned it.

The use of the grand jury in Maryland began in colonial days. An eminent Maryland jurist has observed that although there was increasing conformity to English legal forms and customs in the Province by 1666-1670, there also developed a novel freedom to meet frontier demands.[104] No novel procedure appeared, however, in the prosecution of criminal offenses. The grand jury was, and still is, used.

[The answer to the question of why Maryland clings to its use of the grand jury may lie, not in any attempted explanation based on our common law heritage, but in modern reluctance to make any change in something that is as old and venerable as the sytsem of indicting by means of the grand jury.]

[99] Constitution of Tennessee, Art. I, Sec. 14, Tennessee Code Annotated, Sec. 40. 301.
[100] Tennessee Code Annotated, Sec. 40. 408.
[101] *Ibid.*, Sec. 40. 118.
[102] United States Code Annotated, Title 18, Sec. 1.
[103] *Ibid.*, Title 18, Federal Rules of Criminal Procedure, Rules 7 (a) and (b).
[104] Judge Carroll T. Bond, Archives, *op. cit.*, Vol. LVII, p. xv.

B. THE GRAND JURY SYSTEM

Maryland, along with twenty-six other states and jurisdictions, uses the grand jury as a method of initiating criminal prosecutions. Some twenty-three jurisdictions use the information as an almost complete substitute for the grand jury, which is seldom called for any purpose. Obviously, then, there is merit in the information proceeding. The question then arises: Can it be adopted in Maryland?

Presently, in Baltimore City, almost all crimes except minor breaches of the peace and certain statutory violations must be presented to the grand jury. There is no Constitutional provision or statute requiring this result, nor is there any law permitting criminal procedure by any method other than by indictment by the grand jury. The situation outside Baltimore City is somewhat better. There many misdemeanors fall within the criminal jurisdiction of trial magistrates. In certain other cases, whenever a waiver of the grand jury can be obtained, the case may be initiated by filing an information in the Circuit Court.

[By custom and the common law of England, its grand jury system has become fixed here. The common law never apparently required indictment for all classes of crimes and consequently such extensive use of the grand jury as is found in Baltimore City. Simply by custom, Maryland has fallen into the habit of sending most criminal cases through the grand jury. The result of this is to become stagnant because of tradition.

England, which created the grand jury and gave it to Maryland, began to find that it was a cumbersome process that could be replaced without any loss of fundamental freedom and liberty. Since 1933, England has prosecuted by means of an information system, the germ of which is the hearing before the magistrate where probable cause that the accused committed a crime must be found. This preliminary hearing supplants the grand jury. The information to date has been said to have worked successfully in England.

However, to be efficient, it depends on the presence of a magistrate who is a full-time judge, not a part-time lay political appointee.]

The English lay magistrates, of whom there are about 25,000 in England and Wales, are appointed by the Crown on the advice of the Lord Chancellor for life. The Chancellor is himself assisted in making the choice by local advisory committees or by the lord lieutenant of the county. These lay magistrates receive no salary. The appointment is considered one of great honor and it is much sought after. The magistrates do most of the routine criminal work on the lowest level. The necessary legal knowledge that they need is supplied by their clerk who is an experienced official and a lawyer of at least five years' standing.

In the English cities and towns and urban areas nearby are found the stipendiary magistrates, appointed similarly to the lay magistrates, and lawyers of at least seven years' standing. They receive an annual salary and perform the more serious criminal duties.

It can readily be seen that a magistrate of the English lay or stipendiary type could conduct a fair and impartial preliminary hearing on a criminal charge. Indeed this method provides all the machinery and protection needed for the proper administration of criminal justice.

[As pointed out, Maryland cannot entrust the preliminary hearing to magistrates under the present system of partisan, short-term lay appointees, and expect to preserve the fundamental freedoms that the grand jury now protects.]

Use of the grand jury is required in the case of felonies by the Fifth Amendment to the United States Constitution, and Federal grand juries have been successfully employed on the Federal level. In those states that do have a flourishing grand jury procedure, there is usually an explanation for the high level of effectiveness obtained. In New York it is said to be the use of the so-called "blue ribbon jury" which is drawn from a special jury panel. An effort is made in Baltimore City to duplicate this type of panel used in New York.

In a number of states, there has been no problem of changing the grand jury system. These states have no heritage of the common law and feeling free to adopt or reject the grand jury, long ago made extensive use of the information. None of these states has seen any necessity to return to the grand jury system. Indeed, the trend has been toward some of the grand jury states making more use of the information and less of the indictment by the grand jury.

The continued development of the information can be shown by the following comparison of the information with the indictment systems. The indictment represents the necessity to have an independent body of citizens to initiate prosecutions. It is a fundamental liberty not to be put upon trial except by a jury of peers. The grand jury also has a salutory effect on law enforcement. Through its requirement for secrecy, it allows inquiry but protects the reputation of witnesses. On the other hand the information is a speedier method of prosecuting, more efficient and not dilatory nor

duplicating in its functions. The witnesses in a grand jury system are summoned to a preliminary hearing, then repeat their stories to the grand jury and after going through the tale twice, still have not even appeared in court where there is a trial on the merits and the witnesses for the last time tell their story. One writer on this subject maintains that many accused persons would rather plead innocent in a grand jury prosecution and hope that somewhere during the process there would be a technical mistake in pleading or procedure that would allow them to escape. In an information state, these persons would plead guilty knowing of no other means of escape.[105]

The fundamental liberty of the person can be protected in the information proceeding. The Supreme Court has held that in the absence of an express Constitutional limitation, a prosecution initiated by information is due process of law and violates none of the Constitutional rights of the accused.[106] England has not felt that a fundamental liberty has been lost. England it must be remembered, founded the grand jury. Yet, after using it for some 600 years, they felt that it had outlived its usefulness and could be replaced by another method of criminal prosecution. Accordingly, the magistrate or justice now makes a preliminary inquiry taking the place of the grand jury. It does not appear that England feels any essential liberty to have been lost in changing its method of prosecution. Rather, England feels that other jurisdictions should follow their practice and adopt a simpler yet more efficient method.

Maryland has not seen fit to modify the grand jury but rather to retrogress by utilizing the grand jury to try cases where it was never historically properly employed. It is therefore recommended that Maryland should adopt the information proceeding in place of the grand jury even in the case of felonies. Any change in our method of criminal prosecution must depend absolutely on revision of the office of trial magistrate and replacement by a full time salaried magistrate, either a person from the legal profession or a qualified and respected layman.

Until such time we must continue to use the grand jury, knowing that it can be made more efficient by adopting some or all of the recommendations contained herein.

C. GRAND JURY PROCEDURE

From time to time questions have arisen among grand jurors as to proper procedure in certain aspects of grand jury actions. One grand jury in its report noted the fact that before the grand jury the State's Attorney conducted the examination of the witnesses. Naturally the State's Attorney is desirous by a line of questioning to elicit only those facts that will convince the jury that probable cause of a crime exists. In this manner the grand jury hears only as much information as the State's Attorney develops. Some grand juries have taken over this function of questioning and do it themselves. At the conclusion of their examination, then the State's Attorney could ask any questions of his own. It was felt that this was a function of the jury itself and not of the State's Attorney, and that it was a reassertion of one of the older powers of the grand jury. Whether to do so is a question to be determined by each grand jury for itself. Such a practice is not, by any grand jury which has done it, intended as any criticism of the State's Attorney.

The Baltimore City State's Attorney has stated his concept of the grand jury's function. "It is made clear to the members that they are not the Judge's grand jury, nor are they the State's Attorney's grand jury. Instead they, as a grand jury, are there to protect, not only society from the criminal, but also the individual citizen from the possibility of prosecution without foundation."[107]

There remains however the possibilty of abuse of the grand jury by an unscrupulous State's Attorney.[108] This fact is recognized by State's Attorney's themselves. Under remarks on his duties to the grand jury, the State's Attorney of Baltimore City noted that "(t)he State's Attorney must be ever alert and zealous in carrying out his duties, but he must also be extremly careful not to thwart the spirit and letter of our democratic procedures."[109]

It is probably well to stop and reflect at times on the reasons and purposes of the grand jury, for modern juries are probably prone to follow the pattern of the recent past, whatever that might have been, good or bad.

Another comment that has been made concerning grand jury procedure relates to a difference between

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[105] Warner and Cabot, *Changes in the Administration of Criminal Justice During the Past Fifty Years,* 50 Harvard Law Review 583, 1937.

[106] Hurtado v. People, 110 U. S. 516, 4 S. Ct. 111, 1884.

[107] Report of State's Attorney's Office of Baltimore City, Jan. Term, 1956-1957, J. Harold Grady, State's Attorney, p. 6.

[108] See a discussion of this subject in the Report of the Grand Jury for Baltimore City, September Term, 1956.

[109] Report, Jan. Term, 1956-1957, *op. cit.,* p. 6.

State and Federal practice. In the trial of Federal criminal cases, the United States Attorney or his assistants present the witnesses to the grand jury and question them. They then retire from the grand jury room, while the jury questions the witnesses further, deliberates and votes. The assistant who conducted the grand jury questioning participates later in the trial of the case.

Under State criminal procedure the Assistant State's Attorney who conducts the grand jury questioning is seldom the one who tries the case in Criminal Court. The assistant sees the grand jury transcript only a few days in advance of the trial and has only a brief opportunity to familiarize himself with the facts of the case. Of course, any unpreparedness of the assistant works to the practical advantage of the accused. It would seem that consideration might be given to a system of assignment whereby the same person who conducts the questioning before the grand jury also tries the case in court.

Another area of reform in grand jury procedure is through grand jurors associations. There is an organization in Baltimore City, which is probably the only such group in the State. An examination of the reports of any grand jury in this State will reveal suggestions and remarks on criminal law and criminal procedure. Often the next succeeding grand jury will dutifully note in its own report that the recommendations of the former jury on a subject has not been acted upon. Unfortunately the grand jury that is retiring can do nothing about implementing its own recommendations. An association of grand jurors could do much in the way of publicizing these reports and their remarks.

There is also no reason why previous grand jury foremen couldn't be called before the present grand jury to discuss prior recommendations, and at the same time the responsible persons could be called to follow the foreman to explain the action taken to implement such recommendations.

Likewise the foremen of previous juries could always be called before a grand jury to bring them up to date on inquiries not concluded previously or for the purpose of giving general assistance to a new jury in the proper performance of their duties.

These are matters that lie wholly within the power of a grand jury and which require no outside direction by statute.

D. TERM OF THE GRAND JURY

Even those who want to have all crimes prosecuted by means of an information realize that the grand jury should be retained for certain types of investigations. It is this inquiry into political or governmental matters that may take longer than the period permitted for the present grand jury term. In Maryland, the grand jury term is co-extensive with the term of court out of which it is appointed. This is the rule in many states; the reason for it is stated in an Illinois case that "at common law the grand jury expired with the term (of court) and no statute has changed this rule or authorized any court to continue a grand jury beyond the adjournment of the term."[110] Whatever the original reason for so limiting the grand jury term, it obviously raises great practical difficulties in jurisdictions like Illinois which at that time had only a one month term of court. While little in the nature of continuing investigation can be done in one month, the Criminal Court term of four months in Baltimore City is sufficiently long to cover most inquiries. The January 1954, term of the Baltimore City grand jury in its report recognized the need for a longer grand jury term where necessary.[111] Its recommendation was that continuance beyond the term of court in order to pursue unfinished matters be authorized by the Court in its discretion. The next regular grand jury would be sworn in for disposition of usual grand jury business. This would not divorce the term of court and grand jury term from each other but would permit a grand jury to remain in office for the sole purpose of completing an inquiry into a matter that it did not have time to complete. There would be of course two grand juries sitting at the same time, but for different purposes.

A bill to carry out this suggestion was presented to the 1957 Session of the General Assembly.[112] It was referred to the City Senators Committee, but was not reported by it, although a hearing was held on the bill. The text of the bill is presented in the Appendix.

There is another suggestion by the Commissioners on Uniform Laws which would divorce the terms of court from that of the grand jury.[113] It provides for a grand jury to serve until discharged by the court and places a

[110] People v. Brautigan, 310 Ill. 472, 142 N. E. 208, 1923.
[111] Report of the Grand Jury of Baltimore City for January Term, 1954, *Daily Record*, May 8, 1954.
[112] Senate Bill No. 190 by Senator Dempsey.
[113] Uniform Rules of Criminal Procedure, Rule 13.

maximum time limit on the life of any jury. It also provides that the grand jury may continue in office to complete an investigation already begun.

Such a provision is similar to the one found in the Federal Rules of Criminal Procedure.[114] There the possible life of a grand jury is limited to a maximum of eighteen months.

The Federal grand jury ordinarily serves during the term for which summoned, but if it is extended, it may conduct only investigations commenced during the original term.

Under Maryland practice, the term of court is sufficiently long that most grand jury business can be disposed of. In that event, no real necessity exists for changing the present grand jury term. However, a provision for continuing in office an outgoing grand jury to complete an inquiry should be enacted. Conditions may arise toward the end of the regular grand jury term requiring the attention of the jurors, and to begin such investigation only to stop and turn over the results to a new jury is a wasteful practice and detrimental to the inquiry.

At the same time, there should be enacted a provision for the calling of a special grand jury by order of the Circuit Courts or the Supreme Bench of Baltimore City to investigate any matter when the regular grand jury is in recess or busy with routine matters. Such special grand juries are called in some states by petition over the signature of a certain percentage of the voters.

Under the Federal Rules of Criminal Procedure, the District Judge may order one or more grand juries to be summoned as the public interest requires.[115]

E. SECRECY OF GRAND JURY MINUTES AND PROCEEDINGS

1. General Rule of Secrecy

In England, which has abolished the grand jury system, a transcript of the preliminary hearing is written up and is thereafter available to either side. The question has been raised in Maryland in the past whether the minutes of proceedings under the grand jury system should be made available to the accused.

At the preliminary hearing before the police magistrate, the accused may have the benefit of counsel. Before the grand jury the proceeding is secret. However the State's Attorney to a certain extent guides the grand jury in its deliberations by determining what witnesses shall be called to appear before the grand jury. In effect he gathers the evidence from which the grand jury must come to a conclusion that probable cause exists or does not exist.

While the grand jury has seldom any personal knowledge of the charges from which to reach a decision, the conclusion made is solely that of the grand jury reached as the result of hearing the witnesses appearing before it.

Having had the benefit of the grand jury hearing, the State's Attorney and his assistants are then ready in the event a true bill is found, to face the accused in Criminal Court. It would seem that the accused benefits more from the preliminary hearing before the magistrate than from the grand jury proceeding, as far as helping his own defense. And the theory of the grand jury system is one of protecting individual rights against the government. Other remedies have been granted to defendants, and it is suggested no reason can be seen why an accused should not have the benefit of the transcript of proceedings before the grand jury.

However, the function of the grand jury is to accuse, not to try, in criminal cases. Their deliberations have always been held in secret and rightfully so—since a person may be presented to the grand jury and no true bill found. The Courts and judiciary of this State have many times said that secrecy is necessary for the protection of all persons whether accused justly or falsely. This rule of secrecy applies to pending cases as well as thereafter.

Other reasons which have been given for the rule of secrecy are: "First, in order to secure the utmost freedom of deliberation on the part of the grand jury, and freedom of disclosure on the part of informers; secondly, to prevent the escape of the party should he know that proceedings were in train against him; and thirdly, to prevent the testimony before them from being contradicted at the trial before the traverse jury by subornation of perjury on the part of the accused."[116]

2. Recent Maryland Decisions

In a recent case, one of the points raised on appeal dealt with grand jury procedure and invasion of privacy of the grand jury.[117] There the lower court had refused to dismiss an indictment where an attorney had publicly demanded to appear before the grand jury in

[114] U. S. C. A., Title 18, Federal Rules of Criminal Procedure, Rule 6 (g).
[115] *Ibid.*, Rule 6 (a).

[116] Elbin v. Wilson, 33 Md. 135, 1870.
[117] Piracci v. State, 207 Md. 499, pp. 512-515, 115 A. 2nd. 262, 1954.

regard to further investigation of alleged irregularities in the Baltimore City off-street parking program. The demand was made after the grand jury had presented an accused involved in the off-street parking program and before the indictment had been prepared. The grand jury then invited the attorney to appear before it. The Court's opinion observed that undoubtedly the attorney would have commented on the presentment already made, but such action was not sufficient to invalidate the indictment. Likewise any private person may address the grand jury, and it may act at the instance of a private prosecutor.

The Court then held, distinguishing Coblentz v. State,[118] that the conduct of the attorney did not constitute an interference with the procedure of the grand jury. The attorney, prior to refusal of the motion to dismiss the indictment in the lower court, had been found not to be in contempt of the grand jury for his actions. The Court held this would not have precluded the grand jury from calling before it whom it pleased and interrogating them.

The Court likewise held that there was no invasion of privacy of the grand jury where newspaper reporters had waited outside the grand jury room, noted and identified publicly those who went in to the grand jury and left and the time they remained in the room. The reporters did not enter the room, attempt to eavesdrop or in any way to interfere with the orderly exercise by the grand jury of its functions.

The Court stated " . . . the rule of secrecy is designed to protect the jury from outside interference or pressure, not to guarantee against unauthorized disclosure of a presentment or the charges on which it is based."[119]

A decision of great significance respecting grand jury secrecy was rendered recently in Baltimore City.[120] In indictments of two officers of the Baltimore City Police Department, charged with, among other matters, suborning two members of the Department to testify falsely and commit perjury in a prior criminal trial, motions were made before the trial on the indictments for a copy of the entire transcript of proceedings in the case conducted by the grand jury prior to return of the indictments by the jury. The issue was reduced after argument and presentation of written memoranda to the trial judge to a request for that part of the transcript which included the statements of those persons noted on the indictments as State's witnesses. A total of forty-seven different persons were so listed.

The Court ruled that motions for the testimony of witnesses were denied, except in the case of the testimony of the two members of the Department who were suborned by the accused.

The Court's reasoning proceeded from a dismissal of the holding in Jencks v. United States[121] as not being applicable to a State criminal case to a denial of the power of general extension of the scope of pre-trial discovery in criminal cases as not being required in the instant cases; these being the two chief grounds relied on by the defendants to entitle them to production of the requested testimony.

The Court noted in denying its general power to order per-trial discovery that to order production of the testimony of forty-seven witnesses would do violence to the requirement of the Court of Appeals that grand jury investigations be secret.

Having once established the rule of secrecy, the Court, after referring to two early Maryland cases[122] involving procedure at trial, stated "(n)evertheless they are authorities to the effect that when there is an issue of perjury involved, testimony as to the evidence of the witnesses given before the grand jury may be admissible as an exception to the rule as to the secrecy of grand jury procedure."[123]

The Court thereupon denied defendant's motion for pre-trial discovery, except as to the two witnesses who had been suborned, as to whom the motion was granted.

The ruling of Judge Oppenheimer in State v. Forrester, et al, was precedent shattering. What had previously been considered settled practice since Colonial days was upset.

Concerning the rule of secrecy of grand jury proceedings, the Court noted in its ruling that "(t)he purposes of this fundamental rule include not only the preservation of freedom of inquiry but also the protection from disrepute of individuals, whose conduct may be investigated but against whom no indictment may be found, general invasion of the secrecy of proceedings before a grand jury for pre-trial discovery, in my judgment, would be contrary to the policy of administration of justice in criminal cases in this State. Any advantage to the defendants in advance preparation would be more than counter-balanced by the inevitable interference with the effectuation of the purposes of the grand jury system."[124]

Granted that the Court's statement is a good exposition of the reason for the rule, it would seem that

[118] 164 Md. 558, 166 A. 45, 1933.
[119] Piracci v. State, *op. cit.*, p. 515.
[120] State v. Forrester, et. al., Criminal Court of Baltimore City, *Daily Record*, March 20, 1958.
[121] 353 U. S. 657, 1 L. Ed. 2nd 1103, 77 S. Ct. 1007, 1957.
[122] Izer v. State, 77 Md. 110, 26 A. 282, 1893; Kirk v. Garrett, 84 Md. 383, 35 A. 1089, 1896.
[123] State v. Forrester, *op. cit.*
[124] State v. Forrester, *op. cit.*

there are no facts in the Forrester case to justify the creation of an exception to a rule so strongly founded on public opinion.

In the two old cases cited by the Court the problem of who was telling the truth was easily solved.[125] Call the grand jurors as witnesses during trial where they can be cross-examined; their testimony then would not do violence to grand jury secrecy. It is submitted that this is a different situation from that where the transcript of grand jury testimony is made available for inspection by defendant's counsel, who can then fish around for what he can find in the proceedings.[126]

What the precise effect of the decision will be upon grand jury procedure remains to be seen. The ruling is unpopular and alarming to former grand jurymen and foremen. They feel very strongly that it is merely the opening wedge that will lead ultimately to the downfall of the grand jury system. To them secrecy is a basic requirement of the grand jury system, and that secrecy cannot be lifted for even a small moment without seriously thereafter impairing the system itself. Whether this prediction proves to be correct, only time will tell. Lawyers know well that an exception to a rule once made will be utilized until it becomes a part of the rule. Members of the Baltimore City Grand Jurors Association feel that no exception can be made and that regardless of the Court's reasoning, the damage to the grand jury system has been done.

3. Other Jurisdictions

In some jurisdictions release of grand jury minutes is controlled by rule or statute.

(a) Federal criminal procedure.

The Federal criminal rules permit the release of grand jury testimoy to the United States Attorney. Otherwise a juror or stenographer may be required to disclose testimony before the grand jury when directed to do so by the court, preliminary to or in connection with a judicial proceeding, or when permitted by the Court at the request of the defendant upon a showing that grounds might exist for a motion to dismiss the indictment because of matters occurring before the grand jury.[127] The decisions of the Federal courts under the rule indicate that there must be a positive showing of gross and prejudicial irregularity in the grand jury proceedings to entitle a defendant to examine testimony from a grand jury.[128] The courts have held that the power to inspect minutes will be exercised sparingly, and that averments on information and belief of irregular procedure vitiating the indictment will not be sufficient.[129]

(b) New York.

The New York Code of Criminal Procedure in outlining the duties of the stenographer to the grand jury, directs the stenographer to furnish a full copy of all testimony to the district attorney and provides that no testimony shall be released to others except upon the written order of the Court after hearing the district attorney. Furthermore it provides that the Court may, upon petition of the grand jury, showing the approval of at least twelve members of the jury, impound the stenographer's record and order same to be delivered to him and placed in either his custody or in the custody of a public officer named by the Court.[130]

A summary of the case law annotations to this section shows the scope and limitations of this section.

1. The Court and the district attorney always have access to the minutes.

2. Other persons, including law enforcement bodies and officers thereof, may move to inspect the minutes for the purpose of facilitating and making efficient the administration of justice, provided the inspection is in the public interest.

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[125] See note 122.

[126] In perjury cases where an accused was indicted for perjury in giving testimony to a grand jury, the accused was entitled before trial to inspect minutes of his own testimony which might have directly supported his defense. He was not entitled to the testimony of others. See U. S. v. Remington, 191 F. 2nd, 246, cert. denied, 96 L. Ed. 1325, 1951.

[127] U. S. C. A., *op. cit.*, Rule 6(e).

Secrecy of Proceedings and Disclosure.

"Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. Otherwise a juror, attorney, interpreter or stenographer may disclose matters occurring before the grand jury only when so directed by the court preliminary to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The Court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons."

The Judges of the Federal District Court for the District of Maryland indicate that a motion under the above rule is rarely made, if, in fact, any such motion has ever been made in this District.

[128] U. S. v. Aman, Dist. Ct., Ill., 13 F. R. D. 430, 1953.

[129] U. S. v. Sugarman, Dist. Ct., R. I., 139 F. Supp. 878, 1956; U. S. v. Lipshitz, Dist. Ct., N. Y., 132 F. Supp. 519, 1955; U. S. v. Profaci, Dist. Ct., N. Y., 124 F. Supp. 141, 1954.

[130] McKinney's Laws, *op. cit.*, Vol. 66, Part II, Sec. 952(t).

"It shall be lawful for any stenographer duly appointed and qualified as hereinbefore provided, to attend and be present at the session of every grand jury impaneled in the county in which he is appointed, and it shall be his duty to take in shorthand or upon a typewriting machine the testimony introduced before such grand juries, and, except when his original notes and minutes and the exhibits pertaining thereto have been

3. An indicted defendant may move the Court to inspect minutes in order to determine whether grounds exist for a motion to dismiss the indictment.

4. The defendant may not inspect the minutes as a matter of right; it is within the discretion of the Court to allow the motion if good cause is shown.

5. Good cause is not inspection to determine a point of law or to prepare a case for trial, but a reason that would permit the defendant to set aside the indictment as not sufficient evidence of a crime. Such a reason would be failure to comply with the requirement of finding, endorsing or presenting the indictment according to law, or where unauthorized persons were present before the grand jury while the charge was being considered.

6. The Court need not grant the motion, even though it might be proper otherwise to do so, if the granting would defeat the ends of justice.

Another relevant section of the New York Criminal Code provides that any member of the grand jury may be required by a court to disclose testimony of a witness examined before the grand jury, for the purpose of ascertaining whether the testimony given there is consistent with that given by the same person as a witness in court, or to disclose the testimony given before them by any persons upon a charge against them for perjury in giving his testimony, or upon his trial therefor.[131]

4. Legislation in Maryland

Legislation was presented to the 1957 Session of the General Assembly in regard to secrecy and minutes of grand jury proceedings. One section of this bill would have prohibited any person other than members of the grand jury from being present in the room when a vote to indict is taken. Another section would have required the State's Attorney to advise the grand jury and present any proper evidence to it, while prohibiting any member of the State's Attorney's office from attempting to influence the vote of any juror. The third section of the bill would have directed that any person indicted by the grand jury should be entitled to have a copy of the testimony before the grand jury which considered his case and indicted him. It went on to provide that any person indicted by the grand jury might move to quash his indictment and the Court, after reading the testimony, might grant the motion if the Court found insufficient evidence presented on which to return an indictment.

This latter procedure would seem to be substitution of the Court for the judgment of the grand jury and to constitute nullification of the function of the grand jury. It apparently ignores the well established rule that the grand jury has inherent power to indict from its own knowledge and without relying on any testimony presented to it.

This bill was referred to the House Judiciary Committee and subsequently never reported out.[132] The bill is set forth in the Appendix.

F. SELECTION OF GRAND JURORS

Two methods are presently provided by statute in Maryland.[133] First, in the counties, the Clerk to the County Commissioners submits to the Circuit Court a list of all taxable persons residing in the county. From these lists, the judges select panels of jurors. Then prior to the next term of court, the names on the panel are placed in a box and forty-eight names are drawn out. The judge first appoints one person as foreman of the grand jury and the remaining forty-seven names are again drawn from a box, with the first twenty-two designated as grand jurors together with the foreman, and the remaining twenty-five serving as petit jurors.

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impounded as hereinafter provided for, to furnish to the district attorney of such county a full copy of all such testimony as such district attorney shall require, but he shall not permit any other person to take a copy of the same, nor of any portion thereof, nor to read the same, or any portion thereof, except upon the written order of the court duly made after hearing the said district attorney, provided, however, that the judge presiding over the term of court for which any grand jury is drawn, may at any time during the sitting of such grand jury and upon petition signed by its foreman or acting foreman and certified by its clerk to have been authorized by twelve or more of the grand jurors constituting such grand jury, impound the stenographer's original notes and minutes and the exhibits pertaining thereto, or any portion of such original notes, minutes, and exhibits, and may order them to be delivered to him and placed in his custody or in the custody of a public officer named by him. When so impounded, such original notes, minutes, and exhibits shall not be taken from the custody of such judge or such public officer except upon the order of such judge, who, upon the written requisition of the foreman or acting foreman of such grand jury, shall deliver them or order them to be delivered to such foreman or acting foreman for use in the grand jury room during the hours when the grand jury is actually in session. Except as above provided, all of the said original notes and minutes shall be kept in custody of said district attorney, and neither the same, nor a copy of the same, or any portion of the same, shall be taken from the office of said district attorney, excepting as above provided. Nothing contained in this section, however, shall be construed to prohibit a grand jury from inspecting its own minutes and exhibits while in session."

[131] McKinney's Laws, *op. cit.*, Vol. 66, Part I, Sec. 266.

[132] House Bill No. 228, by Messrs. Mandel and Abramson.

[133] See generally Annotated Code of Maryland, *op. cit.*, Art. 51, Secs. 6, 9, 10, 11, 12, 13, and 14.

This method has been criticized because it sometimes secures a good grand jury but more often only a mediocre one. Under the present grand jury system, with the State in charge, a mediocre jury is nothing more than a rubber stamp to approve what the State presents. This certainly gives little protection to the accused. The best results are obtained with an above average jury panel.

By statute, Baltimore City has a drawing provided for[134]. In April of each year, the Supreme Bench is to meet and select 750 names for the yearly panel of jurors. In making up this list, the Treasurer of Baltimore City shall provide a list of such of the taxable inhabitants of Baltimore City as the judges shall direct. From this list, before each term of court, the judges select twenty-three names to serve as grand jurors, and the judge sitting in Part I of Criminal Court appoints one of this number to serve as foreman and another as assistant foreman.

In actual practice, before each term of court, each judge brings a list of from two to ten names of persons he considers qualified to serve as grand jurors. These lists are discussed and a composite list made up which is submitted to the Clerk of Superior Court for verification with the list of taxable inhabitants. These persons are thus selected as grand jurors. This method has been found to be very effective in securing a high class of grand jurors who carry out their duties as grand jurors in a very efficient manner. It has been worked out in Baltimore City by giving to the judges a certain discretion in selecting jurors. Extension of such a practice to the State as a whole would be desirable.

[134] Charter and Public Local Laws of Baltimore City (1949 Ed.), Secs. 382-384.

Appendix

A. CRIMINAL PROCEDURE BY STATES

Compiled from data available in 1957 for 39 States and the Federal Government. Up to date data was lacking for the States of Alabama, Montana, Nevada, North Dakota, South Dakota and Utah, however they are included with the latest data available.

State	Either information or indictment may be used for all crimes, including felonies, with Constitutional or statutory references.	Indictment required generally for felonies, or infamous crimes, the indictment or information used for misdemeanors and lesser crimes, with Constitutional or statutory references.
Alabama		Const., Art. I, Sec. 8, Amendt.. 37. Indictment for indictable offenses (felonies), information for misdemeanors. In all cases except capital offenses a guilty plea will waive indictment.
Arizona	Const., Art. II, Sec. 30.	
Arkansas	Const., Art. II, Sec. 8, Amendt. 21.	
California	Const., Art. I, Sec. 8. Penal Code, Sec. 737.	
Colorado	Const., Art. II, Sec. 8. Revised Statutes (1953), Sec. 39-4-1.	
Connecticut		Const., Art. First, Sec. 9, General Statutes (1949), Sec. 8775. Indictment for offenses punishable by death or life imprisonment, information or indictment for other offenses.
Delaware		Const., Art. I, Sec. 8, Rules of Criminal Procedure of Superior Court, Rule 7(a). Indictment for offenses punishable by death, information for other offenses, if indictment is waived.
Florida		Const., Dec. of Rights, Paragraph 10, Art. V, Sec. 9. Indictment for offenses punishable by death, information or indictment for other felonies and misdemeanors.
Georgia		Code, Anno. (1955), Sec. 27-704. Indictment for felonies (capital or sentence to Penitentiary), indictment may be waived in misdemeanors.
Idaho	Const., Art. I, Sec. 8.	

Illinois		Const., Art. II, Sec. 8. Indictment for offenses punishable by fine and imprisonment, or by fine or imprisonment, in the Penitentiary, information for other offenses.
Indiana		Annotated Statutes, Criminal Code, Title 9, Sec. 908. Indictment for treason and murder, an information proceeding by affidavit for other offenses.
Iowa	Const., Art. I, Sec. 11, Amendment 3 of 1884.	
Kansas	General Statutes (1949), Chap. 62, Sec. 801.	
Kentucky		Const., Bill of Rights, Sec. 12. Indictment for indictable offenses (felonies and infamous crimes), information for other offenses.
Louisiana		Const., Art. I, Sec. 9. Indictment for capital offenses, indictment or information for other offenses.
Maine		Const., Art. I, Sec. 7. Indictment for capital or infamous crimes (sentence of more than 1 year to Penitentiary), indictment or information for other offenses.
Maryland		Required by common law usage and interpretation of Const., Dec. of Rights, Sec. 23. Indictment for felonies and most misdemeanors in Baltimore City; in all but one county, information for all offenses if indictment is waived, in Baltimore County, indictment for felonies, information for all others, if indictment is waived.
Massachusetts		Const., Art. XII (13), Laws Ch. 263, Secs. 4, 4A. Indictment for cases punishable by death, lesser offenses by complaint, if indictment waived.
Michigan	Statutes Anno., Sec. 28.941, 28.943-946.	
Minnesota	Const., Art. I, Sec. 7, Statutes, Sec. 628.29.	
Mississippi		Const., Art. III, Sec. 27. Indictment for indictable offenses (death and imprisonment in Penitentiary), an information procedure for other offenses.
Missouri	Const., Art. I, Sec. 17, Statutes, Sec. 545.010.	
Montana	Const., Art. III, Sec. 8.	

Nebraska	Const., Art. I, Sec. 10, Revised Statutes (1943), Title 29, Sec. 1601.	
Nevada	Const., Art. I, Sec. 8.	
New Hampshire		Const., Bill of Rights, Art. 15, Revised Laws (1942), Chap. 427, Sec. 1. Indictment for offenses punishable by death or imprisonment for more than 1 year, information for other offenses.
New Jersey		Const., Art. I, Sec. 8, Statutes, Title 2A, Sec. 152.3. Indictment for criminal offenses (common law offenses), except cases now prosecuted without indictment.
New Mexico	Const., Art. II, Sec. 14.	
New York		Const., Art. I, Sec. 6. Indictment for capital or infamous crimes (sentence to Penitentiary longer than 1 year), except petit larceny, information for misdemeanors.
North Carolina		Const., Art. I, Sec. 12. General Statutes, Secs. 15.137, 15.140, 15.140.1. Indictment for all criminal charges except petty misdemeanors, waiver of indictment for all except capital cases
North Dakota	Const., Art. I, Sec. 8. Revised Code (1943), Title 29, Secs. 0101, 0901.	
Ohio		Const., Art. I, Sec. 10. Indictment for capital or infamous offenses (sentences to Penitentiary), information for other offenses.
Oklahoma	Const., Art. II, Sec. 17.	
Oregon	Const., Art. VII, Secs. 5, 18. Indictment for crimes or misdemeanors, but any crime, by information, if indictment waived.	
Pennsylvania		Const., Art. I, Sec. 10. Indictment for all indictable offenses.
Rhode Island		Const., Art. I, Sec. 7. Indictment for capital or infamous offenses, information for other offenses.
South Carolina		Const., Art. I, Sec. 17, Code, Title 17, Sec. 401.
South Dakota	Const., Art. VI, Sec. 10.	

Tennessee		Const., Art. I, Sec. 14, Code Anno., Sec. 40.118. Indictment for any criminal offense except small offenses (fines not over $50), summary proceeding for small offenses.
Texas		Const., Art. I, Sec. 10. Indictment for all offenses punishable by sentence to Penitentiary (felonies), information for offenses punishable by fine or imprisonment not in Penitentiary (misdemeanors).
Utah	Const., Art. I, Sec. 13.	
Vermont		Statutes (1947), Paragraphs 2354, 2371. Indictment for capital offenses and those punishable by sentence to Penitentiary, information for other offenses.
Virginia	Code, Title 19, Sec. 136. Indictment for felonies, except where indictment is waived, in which case information is used, other offenses by information.	
Washington	Const., Art. I, Sec. 25.	
West Virginia		Const., Art. III, Sec. 4. Indictment for felonies, treason or crimes not cognizable by justices, other offenses by summary proceedings.
Wisconsin	Const., Art. 1, Sec. 8. Statutes Anno., Sec. 955.12.	
Wyoming	Compiled Statutes (1947), Sec. 10.601.	
United States		Const., Amendment 5. Indictment for capital or infamous crimes, information for lesser offenses.

B. INSPECTIONS BY MARYLAND GRAND JURIES

(Reports of Grand Juries for 1953 and 1954 terms of Court)
Baltimore City, 1957

County	County Jails	Court Houses	County Buildings	County Homes and Almshouses	County Hospitals and Infirmaries	State Buildings
Allegany	x	x	County Building, Treasurer's Office	x	x	Sylvan Retreat
Anne Arundel	x	x	Schools, Police Dept., Health and Welfare Building	x		Barrett School, House of Correction, Reformatory for Women, Crownsville State Hospital
Baltimore	x		All County Offices	x		House of Correction, Rosewood, Spring Grove Hospital, Maryland Training School
Calvert	x					
Caroline	x	x	County Farm	x		
Carroll	x			x		
Cecil	x	x				
Charles	x	x				
Dorchester	x	x	Roads Dept.			
Frederick	x			x	x	
Garrett	x	x	Treasurer's Office			
Harford	x			x		
Howard	x	x	All County Offices			
Kent	x	x				
Montgomery	x					
Prince George's	x		Police Dept., County Service Building	x	x	

County	County Jails	Court Houses	County Buildings	County Homes and Almshouses	County Hospitals and Infirmaries	State Buildings
Queen Anne's	x	x				
St. Mary's	x	x	All County Buildings			
Somerset	x	x				
Talbot	x	x	County Building			
Washington		x	Shirley Building	x		Reformatory for Males
Wicomico	x	x				
Worcester	x	x				
Baltimore City	x					Penitentiary

Note: x indicates inspection made by grand jury.

C. BILLS RELATING TO THE GRAND JURY AT THE 1957 GENERAL ASSEMBLY

SENATE BILL No. 190

An Act to add new Section 262A to the Charter and Public Local Laws of Baltimore City (1949 Edition), title "Baltimore City", sub-title "Criminal Court of Baltimore", said new section to follow immediately after Section 262 thereof, providing for the continuance by the Judges of the Supreme Bench of Baltimore City sitting as the Criminal Court of Baltimore City of the Grand Jury for any regular term of court into the next succeeding term of court, and relating generally to such continuance and to grand juries in Baltimore City.

SECTION 1. Be it enacted by the General Assembly of Maryland, That new Section 262A be and it is hereby added to the Charter and Public Local Laws of Baltimore City (1949 Edition), title "Baltimore City", sub-title "Criminal Court of Baltimore", to follow immediately after Section 262 thereof, and to read as follows:

262A.

(a) When the grand jury for any regular term of the Criminal Court of Baltimore City shall have begun an investigation or inquiry and, prior to the end of such term of court, the Judges of the Supreme Bench of Baltimore City sitting as the Criminal Court for such term shall deem it necessary or desirable that the investigation or inquiry be continued by the said grand jury into the next succeeding term of court, the said judges shall pass an order directing the grand jury to be so continued and specifying the particular investigation or inquiry for which it is so continued. Such grand jury shall possess all the powers it had when originally appointed, provided that it shall be limited to the investigation or inquiry specified in the order of the Judges.

(b) Any such grand jury shall continue its investigation until the same has been completed or until sooner discharged by order of the Judges of the Supreme Bench sitting as the Criminal Court, provided, however, that this special grand jury shall not interfere with the new grand jury in any way. Whenever the Judges of the Criminal Court shall order any grand jury to be so continued, the said Judges shall proceed to select the grand jury for the next succeeding regular term of such court as otherwise provided for herein.

SEC. 2. And be it further enacted, That this Act shall take effect June 1, 1957.

HOUSE BILL No. 228

AN ACT to add new Section 11A (1) to Article 51 and new Sections 679A and 679B to Article 27 of the Annotated Code of Maryland (1951 Edition and 1956 Supplement), titles "Juries" and "Crimes and Punishments", sub-titles "Qualification and Selection of Jurors" and "Jurisdiction, Procedure and Sentence", subheading "Jurisdiction", respectively, said new Section 11A (1) to follow immediately after Section 11A of Article 51 and said new Section 679A and 679B to follow immediately after Section 679 of Article 27, providing that only Grand Jury members shall be present in the Grand Jury room when a vote is taken, that the State's Attorney shall not influence any member of the Grand Jury as to his voting and that a person who has been indicted shall receive a copy of the testimony presented to the Grand Jury.

SECTION 1. Be it enacted by the General Assembly of Maryland, That Section 11A (1), be and it is hereby added to Article 51 of the Annotated Code of Maryland (1951 Edition and 1956 Supplement), title "Juries", sub-title "Qualification and Selection of Jurors", said new section to follow immediately after Section 11A thereof, and to read as follows:

11A. (1) No person other than the members of the Grand Jury shall be in the Grand Jury room when any vote is taken to return an indictment.

SEC. 2. And be it further enacted, That new Sections 679A and 679B, be and they are hereby added to Article 27 of the Annotated Code of Maryland (1951 Edition and 1956 Supplement), title "Crimes and Punishments", sub-title "Jurisdiction, Procedure and Sentence", sub-heading "Jurisdiction", said new sections to follow immediately after Section 679 thereof, and to read as follows:

679A. The office of the State's Attorney shall advise and present to the Grand Jury any evidence which they believe necessary in order for the Grand Jury to properly function; however, any member of the State's Attorney's Office who attempts to influence any member of the Grand Jury to vote either for or against returning an indictment shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00) or to imprisonment of not less than thirty days nor more than one year, or both fine and imprisonment in the discretion of the court.

679B. (a) Any person who has been indicted by the Grand Jury shall receive a copy of all testimony given to the Grand Jury before which he was presented and indicted.

(b) Any person indicted by the Grand Jury shall have the right to file a motion to quash the indictment, and the Court shall grant said motion if it believes, after reading a copy of the testimony which was given to the Grand Jury, that there was insufficient evidence upon which to return an indictment.

SEC. 3. And be it further enacted, That this Act shall take effect June 1, 1957.

D. GRAND JURORS OATH

"In the presence of Almighty God, you, as members of the Grand Inquest of the State of Maryland, for the body of the City of Baltimore, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge or shall otherwise come to your knowledge, touching this present service; the counsel of the State of Maryland, your follows and your own, who shall well and truly keep secret; you shall present no persons through envy, hatred, malice or ill-will, neither shall you leave anyone unpresented through love, fear, favor or affection, or for any hope or promise of reward, but you shall consider all cases truly as they come to your knowledge, according to the best of your understanding."

Taken from the charge of Judge Anselm Sodaro to the Grand Jury,
May Term, 1958, Daily Record, May 13, 1958.

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13.	Experience Rating in Unemployment Compensation	September, 1942
14.	Tax Sales in Maryland	October, 1942
15.	Filing and Publication of Administrative Rules and Regulations	October, 1942
16.	Self-Insurance on State Property	October, 1942
17.	Authority to Remove Bank Officials and Employees	October, 1942
18.	Supplementary Report on Building and Loan Associations	November, 1942
19.	State Aid to Higher Education in Maryland	November, 1942
20.	Supplementary Report on Roadside Control	November, 1942
21.	Supplementary Report on Local Legislation	November, 1942
22.	Administration of Small Estates	August, 1944
23.	Local Government—A Comparative Study	September, 1944
24.	Pensions for County and Municipal Employees	November, 1944
25.	Divorce in Maryland	February, 1946
26.	The Compact of 1785	September, 1946
27.	The Bouse Act	July, 1948
28.	The Declaration of Intentions Act	July, 1948
29.	An Indeterminate Sentence Law for Defective Delinquents	December, 1950
30.	Oyster Cultivation in the Potomac River	February, 1951
31.	Condemnation in Maryland	August, 1958
32.	The Grand Jury	August, 1958