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## Florida Grand Jury

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operate concurrently. The result of this construction would facilitate the County Judge's maintaining jurisdiction over the homestead and real property matters incidental to the efficient and speedy disposition of estates.

Regardless of the construction applied by the court to this question, the problem exists and presents a real threat to all homesteads and real property handled in the course of probate proceedings by the County Judge. This controversy must be resolved, as a malignant ambiguity of this sort could undermine our probate system in Florida.

ALAN H. DOMBROWSKY

## FLORIDA GRAND JURY

### INTRODUCTION

Recently, in Florida, the functions and powers of "Le Graunde Inquest"—as it existed in Medieval England—have been revitalized. The legislature has attempted to employ this old institution to solve contemporary criminal problems.

Attention will be directed toward some of the more important problems encountered by this functionary—which is commonly referred to as the Grand Jury. Whether or not the Grand Jury is the proper institution to cope with modern day exigencies will be left to the readers determination.

In the past the Grand Jury has been frequently described as a mere rubber stamp of the district attorney, a venerable nuisance, a relic of medievalism performing in a slow, costly, cumbersome manner.<sup>1</sup> It has been the belief of many writers and commentators that the Grand Jury should have "gone out with the horse and buggy."<sup>2</sup> The underlying rationale is that many innocent men have incurred irreparable injury as a result of presentments and indictments which were based on inadequate and inefficient investigations.

On the other hand, it has been argued in defense of the Grand Jury System, that it operates as a democratic guarantee against unfounded indictments. The private citizen is given the opportunity to investigate criminal conditions. The proponents of the Grand Jury System conclude

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1. Fabisinski, *The Proposed Amendment of the Constitution Relating to Grand Juries*, 8 FLA. L.J. 43 (1934); Morse, *A Survey of the Grand Jury*, 10 ORE. L. REV. 101 (1931); Comment, 10 ST. JOHN'S L. REV. 219 (1936).

2. Morse, note 1 *supra* at 345; One judge wrote:  
The Grand Jury should have gone out with the horse and buggy. It provides an excellent way for 23 men to get together and spend as much time as they think the court will permit, investigating water melon stealing and other offenses. Some Grand Juries think every one must be indicted. Other Grand Juries think no one should be indicted.

that its functions should remain unchanged; certainly not abandoned. Although both sides can claim the support of well informed advocates, little light is generated from this friction.

As a result of criticism levied at the institution, its activities have been restricted in many states; in others it has been eliminated entirely. Some states have created "One Man Grand Juries" as a substitute, which for all intents and purposes has served to disestablish the system.<sup>3</sup> Employment of the writ of information has been used as an alternative to the issuing of indictments by the Grand Jury.<sup>4</sup>

Because this "Arm of the Judiciary"—as the Grand Jury has been referred to—has often been defended upon the basis of its historical operation, it is imperative that some understanding of its background be digested.<sup>5</sup>

### HISTORY

The Grand Jury claims an ancestry dating back to at least 1000 A.D.;<sup>6</sup> its actual origin, however, is veiled in obscurity.<sup>7</sup> It is generally agreed that the Carolingian Inquisitio was the original investigative body which consisted of, and was conducted by, private citizens.<sup>8</sup> This institution was transplanted in England by the Normans in 1066 A.D., where new procedures were developed and substantive reforms incorporated. At this stage of its development the institution was known as Le Graunde Inquest. Not less than twelve, nor more than twenty-three, of the most prominent citizens of the community were responsible for the proper functioning of this instrumentality of the law. These citizens would generally have some personal knowledge of the criminal activities within their "hundred" or manor. To sift diverse criminal accusations and to inform the itinerant justices of those who *probably* were guilty of the commission of a crime became an important duty. This procedure for initiating a criminal prosecution became well established. The right to be accused by one's peers of a crime involving grave punishment, rather than by an officer of the state, was at last acquired. In addition to formally charging a person with the commission of a crime, this body could also return non-indicting reports, calling attention to undesirable community conditions. Although Le Graunde Inquest would not indict a public officer, the body of jurors was endowed with the responsibility of reporting upon the manner in which public affairs were conducted by these officials.

3. Winters, *The Michigan One Man Grand Jury*, 28 J. AM. JUD. SOC'Y 137 (1945).

4. 37 MINN. L. REV. 586 (1953); EDWARDS, *THE GRAND JURY* 33 (1906 Ed.).

5. *Ibid.*

6. HOLDSWORTH, *HISTORY OF ENGLISH LAW* 313-323 (3d ed. 1922); 2 POLLOCK & MAITLAND, *HISTORY OF ENGLISH LAW* 642-649 (2d ed. 1899); PLUCKNETT, *CONCISE HISTORY OF THE COMMON LAW* 106-110 (4th ed. 1948).

7. Morse, *A Survey of Grand Jury*, 10 ORE. L. REV. 101 (1931).

It is a fact well accepted by historians that the Carolingian kings determined and maintained their rights by means of an inquisitio . . . .

8. Morse, note 1 *supra* at 103.

It was at this stage of its development that this citizen-body acquired the title of Grand Jury. It is interesting to note that England, the cradle of the Grand Jury, has at the present time practically abolished the system.<sup>9</sup>

When the colonists came to America, they brought with them the prevailing legal system used by their mother country. The prosecution of felonies were initiated by Grand Jury indictment, although prosecution of misdemeanors could also be started by indictment; the writ of information was concurrently available to commence the criminal action. Because of our forefathers' belief "What is, is what ought to be for all times," we observe a manifestation of their feelings expressed within the Fifth Amendment of our United States Constitution; "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger . . . ."<sup>10</sup> It was their firm conviction that this was a necessary fundamental safeguard of individual rights against governmental oppression. Remember, however, that this provision of the constitution only applies to cases arising in the Federal Courts. Most states, however, including Florida, do have similar provisions in their constitution.<sup>11</sup>

#### IMPANELING OF GRAND JURY IN FLORIDA

In 1951, the Florida Legislature came to the realization that in order to effectively carry out the constitutional mandate, the Grand Jury system could need a revision. A Grand Jury commission was created.<sup>12</sup> Obtaining a list of qualified<sup>13</sup> Grand Jurors was one of its major functions. Parenthetically, the draftors, realizing that certain professional groups can be of greater value to society performing their chosen tasks, have provided that attorneys cannot serve on the Grand Jury; doctors, dentists, and clergymen may be excused upon request.<sup>14</sup>

The procedures followed in impaneling a Grand Jury are: First, a *register* is kept by the clerk of the circuit court of each county having a population of 325,000 or more; this contains a list of the names, addresses, occupations, and race<sup>15</sup> of those persons wishing to serve as jurors.

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The procedure of the Carolingian *Inquisitio* consisted of summoning subjects before the king and forcing them to supply the crown with such information, touching the administration of the government as was desired.

9. Trumpler, *Decadence of the Grand Jury System in England*, 23 THE PANEL 7 (1945).

10. U.S. CONST. AMEND. V.

11. FLA. CONST. Declaration of Rights, § 10.

12. FLA. LAWS 1951, c. 26518 § 1.

13. *Id.* at § 2.

14. *Id.* at § 2(g).

15. *Richards v. State*, 144 Fla. 177, 197 So. 772 (1940); *Kelly v. State*, 44 Fla. 441, 33 So. 235 (1902); see *Tarrance v. State*, 43 Fla. 446, 30 So. 685 (1901).

The information must be given under oath, and anyone swearing falsely in regard to their qualifications<sup>16</sup> will be found guilty of perjury;<sup>17</sup> Second, from the aforementioned list, the Grand Jury Commission, which meets annually, prepares a list of three hundred names of qualified persons on separate slips of paper; Third, these names are put into the Grand Jury Box and delivered to the clerk of the circuit court under seal, in whose hands they remain until the drawing<sup>18</sup> of the Grand Jury; the next step is for the court to impanel a sufficient number to serve during that particular term of court. In all counties having a population over 225,000 there are to be twenty-three jurors; fifteen jurors constitute a quorum and twelve must concur to indict.<sup>19</sup>

In Dade County there are two terms of circuit court. A Grand Jury has to be called and impaneled at the beginning of each term unless the circuit judge enters an order dispensing with the calling of such body; if this occurs then the existing Grand Jury continues until a new one is summoned, impaneled, and convened at a subsequent term of court.<sup>20</sup> After the administration of the oath,<sup>21</sup> the last formal step taken, a foreman is appointed by the court; some states allow the jurors to make their own selection of a foreman.

At this point the Grand Jury is ready to perform its duties. The accused has been arrested and brought before the committing magistrate. This official has heard the State's evidence and concluded that there is probable cause to believe the accused has committed a crime. He is now "bound over" to await Grand Jury action.

In the past Grand Juries have been hampered by grossly inadequate facilities with which to perform their duties. In 1953 the Florida Legislature endeavored to alleviate this deficiency. The Legislature provided that in all counties having a population of 400,000 or more, the Grand Jury shall employ a permanent Administrative Assistant, who shall serve at the pleasure of the Grand Jury.<sup>22</sup> He is to receive \$4,800 annually. The foreman is given the power to appoint an interpreter when necessary.<sup>23</sup> An

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16. Fla. Laws 1951, c. 26518 § 2. The qualifications are: (1) a United States citizen, (2) of sound mind, (3) who has not been convicted of a felony or a misdemeanor involving moral turpitude, (4) of good moral character and free from criminal alliances or associations and (5) intelligent, well informed, and able to read the English language understandingly, and (6) not a public officer.

17. Fla. Laws 1951, c. 26518 § 3.

18. Fla. Laws 1953, c. 28247 § 1. Those selected or drawn are paid five dollars per day, plus five cents per mile necessarily traveled going to and returning from court by the nearest practicable route.

19. Fla. Laws 1951, c. 26664 § 1.

20. Fla. Laws 1951, c. 26665 § 1.

21. FLA. STAT. § 905.10 (1953). The juror solemnly swears (or affirms) that he will diligently inquire, and make true presentments; keep secret the proceedings, unless a competent court requires otherwise; present no man for envy, hatred, or malice; neither leave any man unpresented for love, fear, favor, affection, reward, or hope.

22. Fla. Laws 1953, c. 28467 § 1.

23. FLA. STAT. § 905.15 (1953).

appropriation of \$30,000 is granted annually to assist the Grand Jury in successfully carrying on its investigative functions.<sup>24</sup> Out of this fund the members of the Grand Jury can employ special legal counsel and

### GRAND JURY V. PETIT JURY

The Grand Jury as distinguished from the petit jury (trial jury) does not "try" a person.<sup>25</sup> The members of the Grand Jury "hear" the evidence of the prosecution *ex parte* and determine whether or not a crime has special investigators.<sup>26</sup> Thus, in Florida, the criticism that the Grand Jury does not have proper facilities to do a good job, is unfounded. been committed by the accused. In order to return a "true bill"<sup>27</sup> the Grand Jurors need only find that there is *probable cause*<sup>28</sup> that said person committed the crime. In the event a "no bill" is returned, the prosecution of the accused is forestalled, generally until at least such time as a new Grand Jury is impaneled. One should not lose sight of the fact that the ultimate innocence or guilt of the accused can only be determined by either the petit jury or the court itself.

### INFORMATION; INDICTMENT; PRESENTMENT

A misunderstanding is often encountered when considering the methods by which a prosecution is begun. The presentment, indictment, and writ of information each present a method that may be employed. The *information* is a declaration by a duly authorized officer of the law, in writing, to the court charging an individual with the commission of some crime.<sup>29</sup> There are, however, some instances when this writ is not available. Florida, with whose laws we are primarily interested, has six capital crimes, the prosecution of which cannot be initiated by a writ of information; an indictment or a presentment is mandatory. These

24. Fla. Laws 1949, c. 25765 § 1.

25. *Ibid.*

26. Herin, *A Eulogy of Jurors*, 8 *MIAMI L.Q.* 1, 5. "A Petit (or trial) jury, is a body of qualified citizens empaneled to decide finally upon facts in dispute in cases being tried in court." In a criminal case the defendant must have been convicted upon evidence beyond a reasonable doubt. *United States v. Greene*, 146 Fed. 803, 824 (S.D. Ga. 1906). "By reasonable doubt is meant an actual, sincere, mental hesitation caused by insufficient or unsatisfactory evidence."

27. A "true bill" was a term indorsed on an indictment under common law to show that a majority of grand jurors (amounting to at least twelve) found the evidence made out a sufficient case to warrant a prosecution. *State v. Graham*, 136 Ala. 134, 33 So. 826 (1903); *Tilly v. State*, 21 Fla. 242 (1885).

28. *Byers v. Ward*, 368 Pa. 416, 84 A.2d 307 (1951); see *Harris v. Gray*, 58 Ga. App. 689, 199 S.E. 831 (1938). The meaning of "probable cause" varies with different actions, e.g., malicious prosecution, authority to issue a search warrant, to arrest, or to indict. It may be defined for the purpose of indicting as "such circumstances which would lead a reasonably prudent man to believe in the guilt of the accused." *State v. Duffy*, 135 Ore. 290, 293, 295 Pac. 953 (1931).

29. 4 *BL. COMM.* 302; 1 *BISH. CRIM. PRO.* § 314 (1st ed. 1882); *People v. Spensker*, 1 *Dak.* 289, 46 *N.W.* 459 (1876); *People v. Gahagan*, 368 *Ill.* 475, 14 *N.E.2d* 838 (1938); *Howard v. State*, 143 *Tenn.* 539, 227 *S.W.* 36 (1921).

crimes are; (1) first degree murder,<sup>30</sup> (2) rape,<sup>31</sup> (3) kidnapping for ransom,<sup>32</sup> (4) killing by interfering with railway trains or aircraft,<sup>33</sup> (5) furnishing narcotic drugs to minors,<sup>34</sup> (6) throwing bombs or discharging machine guns in, upon or across public streets, public parks or public places whether indoors or outdoors.<sup>35</sup>

An *indictment* is a written accusation of one or more persons of a crime or misdemeanor, preferred to and presented upon oath, by a Grand Jury.<sup>36</sup>

A *presentment* on the other hand, is the written notice taken by the Grand Jury of an offense, from their own knowledge or observation, without a bill or indictment laid before them at the suit of the government.<sup>37</sup>

Aside from the constitutional limitations imposed upon the prosecutor in commencing a criminal action, there are also practical considerations. At times the district attorney or county solicitor may have some doubt in the merit of filing a writ of information; he may resolve this doubt by delegating the responsibility to the Grand Jury. In addition, some prosecutors believe that a trial jury will be more inclined to convict if it is aware of the fact that the defendant has been indicted by twelve of his peers. However, other prosecutors have claimed that fewer convictions are obtained through the use of the indictment because of the delay.<sup>38</sup> The rationale of this conviction stems from the fact that witnesses are lost, alibis can be manufactured, and the accused has an opportunity to rehearse his story in time for trial.

#### UNAUTHORIZED PERSONS IN GRAND JURY ROOM

States employing the Grand Jury system have to decide who shall be permitted to be in the Grand Jury chambers while testimony is being heard. Generally an interpreter, stenographer, and the prosecutor are allowed to be present while witnesses are testifying. They usually are required to promise under oath that they will not disclose any testimony offered in their presence.<sup>39</sup> Of course, no person is allowed to be in the jury room while the members of the Grand Jury are deliberating.<sup>40</sup>

30. FLA. STAT. § 782.04 (1953).

31. FLA. STAT. § 794.01 (1953).

32. FLA. STAT. § 805.02 (1953).

33. FLA. STAT. § 782.06 (1953).

34. FLA. STAT. § 398.22 (1953).

35. FLA. STAT. § 790.16 (1953).

36. 4 BL. COMM. 302.

37. *Id.* at 301; *Bennett v. Kalamazoo Circuit Judge*, 183 Mich. 200, 150 N.W. 141 (1914).

38. Moley, *The Initiation of Criminal Prosecution by Indictment or Information*, 28 J. AM. JUD. SOC'Y 137 (1945).

39. FLA. STAT. § 905.14 (1953): "No person shall be present while the grand jury are deliberating or voting."

40. FLA. STAT. § 905.17 (1953); *United States v. Carper*, 116 F. Supp. 817 (D.D.C. 1953).

The fundamental reason for this secrecy is to protect the innocent from unfounded accusations which do not result in an indictment.

In *United States v. Carper*,<sup>41</sup> the defendants were indicted for conspiring to violate the federal narcotics law. The court granted a motion to dismiss the indictment because of the presence of three United States marshals in the Grand Jury room. The court said:

It follows, therefore, that a United States deputy is not a person authorized to be in the grand jury room.

At this point, the question arises whether the defendants are required to show they were prejudiced by the presence of the deputy marshalls. The court concludes that the defendants are not required to do so. In the first place, as the Court has just stated, Rule 6(d) by its specific provisions restricts those who may be present in the grand jury room. It would seem to follow logically that if the rule is to have meaning, its violation is basis per se for invalidating the indictment. To hold otherwise would be to undermine the purpose, effectiveness, and value of the criminal Rule by judicial legislation, which, in effect would be saying that the rules do not mean what they clearly and unequivocally state.

#### PRIVILEGE AGAINST SELF INCRIMINATION

Another problem faced by states employing the Grand Jury System is the procurement of evidence in the face of the constant invocation, by the accused, of the privilege against self incrimination. Today it is almost universally acknowledged that no person may be compelled, in a criminal case, to be a witness against himself.<sup>42</sup> This is true where there is any reasonable possibility that such evidence would *tend* to incriminate him.

In many states however, there are statutes which provide that a witness may be compelled to testify despite the incriminating effect of his testimony. By so doing, however, the witness gains immunity from criminal prosecution.<sup>43</sup> The apparent motive for such statutes is to enable the prosecution to "get its foot in the door." By thus granting immunity to a witness possessed of information concerning the commission

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41. *United States v. Carper*, 116 F. Supp. 817, 820 (D.D.C. 1953).

42. FLA. CONST. Declaration of Rights, § 12. "No person shall be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself . . ." See *Carson v. United States*, 116 F. Supp. 209 (D.C. Cir. 1953), where it was held that the refusal of a witness to answer before the grand jury a question because of good faith, but erroneous, claim of privilege, is not misbehavior constituting a criminal contempt; *Holley v. United States*, 209 F.2d 234 (1st Cir. 1954); *Daly v. United States*, 209 F.2d 232 (1st Cir. 1954); *Maffie v. United States*, 209 F.2d 225 (1st Cir. 1954); *O'Keefe v. United States*, 209 F.2d 225 (1st Cir. 1954); *Holley v. United States*, 209 F.2d 223 (1st Cir. 1954).

43. FLA. STAT. § 932.29 (1953). The crimes where a witness may be compelled to testify are (1) bribery, (2) burglary, (3) larceny, (4) gaming or gambling, (5) or of any of the statutes against illegal sale of spirituous, vinous, or malt liquor.



of "group crimes," his testimony is made available, enhancing the possibility of convicting others involved in the crime. It, of course, would be folly for a prosecutor to permit all the principals and accomplices to enter the Grand Jury room and proclaim, "Yes, I committed that crime." They would walk out freemen, and the purpose of the statute would have been frustrated.

Information which is *voluntarily* given, however, may be used against its declarant.<sup>44</sup> In addition, testimony presented before a Grand Jury is not a confidential communication.<sup>45</sup> Any member of the Grand Jury may be compelled to testify concerning statements made by a witness for the purpose of impeaching the witness.<sup>46</sup>

### SUBPOENA DUCES TECUM

The proper use of the *subpoena duces tecum* by a Grand Jury has also been the subject of extensive discussion by the members of the bar.<sup>47</sup>

Major limitations upon its use have been the constitutional restraint against unreasonable searches and seizures, in addition to the Fifth Amendment prohibition against self incrimination.

The court *In re Grand Jury Subpoena Ducues Tecum*, expressed its views as to the *geographic extent* of the writ:<sup>48</sup>

The fact that a corporation's records and documents are physically located beyond the confines of the United States does not excuse it from producing them if they are in its possession and the court has jurisdiction of the corporation. The test is *control* (emphasis added)—not location of the records.

The answer to the question of *which* documents and/or records the Grand Jurors can compel a witness to submit is somewhat vague. Generally, however, the records must be relevant and material to the purposes of the investigation. Reasonableness is the crucial test employed in determining the propriety of the call for any records. Some of the circumstances used in making such a determination are; (1) the nature, purpose, and scope of the Grand Jury Inquiry, (2) the detail employed in specifying the information needed, (3) the number of documents

44. *Newton v. State*, 21 Fla. 53 (1884).

45. *State v. Dewell*, 123 Fla. 785, 167 So. 687 (1936); *Jinkin v. State*, 35 Fla. 737, 18 So. 182 (1895).

46. See note 45 *supra*.

47. Fla. Laws 1951, c. 27090. For the power of the Federal Grand Jury to issue a *subpoena duces tecum*, see *People v. Allen*, 410 Ill. 508, 103 N.E.2d 92 (1951). "A subpoena duces tecum which is unreasonably broad in its terms is said to constitute an unreasonable search and seizure." *Hale v. Henkel*, 201 U.S. 43 (1903) said that reasonableness is crucial in determining whether a call for a document is a violation of this privilege.

48. 72 F. Supp. 1013, 1120 (S.D.N.Y. 1947); Compare *People v. Allen*, 410 Ill. 508, 103 N.E.2d 92 (1951), *cert. denied*, 344 U.S. 815 (1952) with *Manning v. Valento*, 272 App. Div. 358 (1st Dep't), *aff'd*, 297 N.Y. 681, 77 N.E.2d 3 (1937).

requested, (4) the period of time covered by the desired records and (5) the effect upon the person or business created by the lack of such important records.<sup>49</sup>

Failure to comply with the Grand Jury order (to submit records) will subject the party to prosecution for criminal contempt.<sup>50</sup>

### THE GRAND JURY REPORT

In addition to presentments and indictments, the Grand Jury is empowered to make reports.<sup>51</sup> The reports may be divided into two classifications: "... those which discuss, criticize and make recommendations regarding matters of public interest and those which censure and criticize particular individuals for misconduct in their private lives, or more frequently, in public office."<sup>52</sup> These reports often contain information impugning the personal character of an individual. The individual, as a practical matter, has no adequate opportunity to refute these reports and for this reason the reports have been condemned.

As a general rule, Grand Jurors are immune from suit arising out of any libelous or defamatory statements contained within their reports.<sup>53</sup> The reason is that the statements are given the dignity of judicial utterances. The only recourse left one defamed by such statements is a petition to expunge the record;<sup>54</sup> actually, this has an insignificant curative effect. If, however, the report is made in bad faith, some states hold such act to be beyond the scope of the privilege of a judicial utterance.<sup>55</sup> "Although many reasons for and against the use of reports have been advanced by various courts and commentators, basically the issue of whether or not to permit them is one of balancing the interest of protecting the innocent from accusations which they have no means of rebutting, with the desirability of grand jury exposure of community irregularities."<sup>56</sup> There seems to be little question that the rule of fair play would dictate some restriction upon this function of the Grand Jury. However, before *any* restrictions are imposed, it should be remembered that the present day popularity of this institution stems largely from the performance of this function. The Grand Jury is the only branch of state and county government that is entirely non-bureaucratic; and at the same time it is not party dominated.

49. 37 MINN. L. REV. 586 (1953).

50. *Clein v. State*, 52 So.2d 117, (Fla. 1953). For distinction between criminal and civil contempt see *Staley v. South Jersey Realty Co.*, 83 N.J. Eq. 300, 90 Atl. 1042 (Ch. 1914).

51. 58 DICK. L. REV. 179 (1953); 37 MINN. L. REV. 586 (1953); 4 STAN. L. REV. 68 (1951); 22 OKLA. ST. B.J. 635 (1951).

52. See note 49 *supra* at 603.

53. See note 51 *supra*; 64 U. OF PA. L. REV. 391 (1916).

54. *Owens v. State*, 59 So.2d 254 (Fla. 1952).

55. *Ex parte Robinson*, 231 Ala. 503, 165 So. 583 (1936).

56. See note 40 *supra* at 604-605.

## CONCLUSION

In the past, the states employing the Grand Jury system have experienced a vast multitude of perplexing problems. Each day ingenious defense counsel conceive new technicalities upon which to take advantage of delaying the expeditious handling of cases at the Grand Jury Stage of proceeding.

Many authorities have said that the Grand Jury should be abolished in toto; the "raison d'être" has long since departed. Yet, has the day arrived where we can abandon this democratic institution and rely on politically appointed officers to perform its functions? These safeguards were obtained in our criminal jurisprudence slowly, by battle and sacrifice. Most of the criticisms of the Grand Jury System could be alleviated by the impaneling of more competent men to serve as Grand Jurors.

The Florida Statutes are a major step in the right direction. No Grand Jury in this country can boast of having the facilities that are presently available to the Florida Grand Juries. True, there are dangers of infiltration into this body by criminals and incompetents, but this is true of any democratic institution. A vigilant "public eye" is necessary to make certain that such a condition does not come to pass. By having competent jurors and making them aware of their tremendous powers, the Grand Jury can become the greatest single force in our community for decent local government. At the same time it will keep the prosecution of the people by the people.

HUBERT G. ROBERTS

## NONBUSINESS BAD DEBTS—IS THE TAXPAYER GETTING THE BUSINESS?

### THE PROBLEM

With all taxable years beginning after December 31, 1942, the taxpayer who had suffered bad debts was faced with a problem. This problem was created by Section 124(a) of the Revenue Act of 1942<sup>1</sup> which added a new concept to federal tax law—the nonbusiness debt.<sup>2</sup> The breakdown of existing bad debts into two different classes was required by this new concept. The individual<sup>3</sup> taxpayer had to determine whether his bad debt came under the general rule<sup>4</sup> of business bad debts

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1. 56 STAT. 798 (1942).

2. The pertinent provision has been incorporated into the code as INT. REV. CODE § 23 (k)(4).

3. INT. REV. CODE § 23 (k)(4) expressly provides that corporate taxpayers are not covered by its terms.

4. INT. REV. CODE § 23 (k)(1) [which provides for the general deduction against ordinary income of any bad debts becoming worthless within the taxable year subject to enumerated exceptions such as Section 23 (k)(4)1].