

It would also be a pretty difficult matter to get any witness before the Grand Jury."

Henry W. Unger, who has charge of the preparation of indictments in the District Attorney's office, said:

"The courts have always guarded with great jealousy all records of Grand Jury proceedings. Many of the Judges have held these records to be so secret in character that under no circumstances would they permit any divulgence of them except when defendants on trial exercised their right of calling members of the Grand Jury to testify in the hope of proving perjury by hostile witnesses.

"A case came up in Monroe County about ten years ago bearing upon this subject. Out of it came a bill which passed the Legislature and is on the statutes as chapter 348 of the Laws of 1885. While it refers mainly to the presence of a stenographer at sessions of the Grand Jury, Section 5 of that law has since been construed as giving a court such discretion as was exercised by Judge Moore in favor of Mayor Boody. Here is the material part of that section:

"It shall be lawful for any stenographer, duly appointed and qualified \* \* \* to attend and be present at the session of every Grand Jury \* \* \* and it shall be his duty to take in shorthand the testimony introduced before such Grand Juries and to furnish to the District Attorney \* \* \* 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. All of the said original minutes shall be kept in the custody of said District Attorney, and neither the same, nor a copy of the same or of any portion of the same, shall be taken from the office of said District Attorney excepting as above provided."

"Acting under his discretionary power," said Mr. Unger, "Recorder Smyth, in one of the 'boodle' cases, denied an application for an inspection of the Grand Jury minutes, while he granted an application—except as to expert medical testimony—which was made on behalf of Carlyle Harris."

## WHAT THE LAWYERS SAY.

### Safeguard of Secrecy Should Surround Grand Jury Minutes.

John B. Dos Passos said:

"In a number of cases in this State the courts have held that a defendant who has been indicted is entitled to inspect the minutes of the Grand Jury. This matter rests very largely in the discretion of the court, but where it is made manifest to the latter that it is in the interest of justice that the demand is made, a copy of the minutes will be ordered to be furnished to the defendant.

"I do not remember that there is any case on record in which a defendant who has not been indicted has, on motion, been held to be entitled to obtain these minutes.

"In the first place, if there has been no accusation before a police court, and the defendant has not been indicted, there is nothing upon which he can predicate a motion. If an effort has been made, however, to indict a defendant, which has failed, and a subsequent effort is made before another Grand Jury, I do not see exactly what use could be made of the minutes by the defendant before an actual indictment had been found.

"If the defendant wished to show that testimony had been given to a previous Grand Jury which was contradictory of that offered to the subsequent body, he could very readily accomplish the purpose by having the Grand Jury's attention called to that fact; in other words, he could ask the second Grand Jury to look at the minutes of the first Grand Jury for the purpose of comparing the evidence.

"If the object of a defendant who had not been indicted was to procure the minutes for the purpose of using them against persons in some civil action for maliciously prosecuting him, his remedy, if he had any at all, would be by a subpoena duces tecum, to produce the minutes in court on the trial of a civil action.

"I know nothing of the merits of the controversy or of the merits of the motion in the Brooklyn court, but I am giving you a mere general opinion."

Gen. Wager Swayne, when asked if he had ever heard of any case where the minutes of a Grand Jury had been given to a person who was not indicted, as was proposed before Judge Moore, said:

"No; I never have, and I think that such a thing would be a dangerous precedent. The Grand Jury is the only one of our institutions that is secret, and it is allowed to be so because that body has no power to punish."

Peter B. Olney said:

"I have never heard of such a case. According to the code and to the general practice, the proceedings of the Grand Jury are and ought to be secret, and I think it would be a dangerous thing to allow the minutes to be handed over to any one who had not been indicted.

"If such a thing were done, the efficiency of the Grand Jury would be impaired, and all privacy would be taken away from its proceedings. The Grand Jury has thrown around it all the safeguards that human ingenuity can devise, and I think it would be a dangerous precedent that the minutes of the Grand Jury should be spread on record for all the world to look at."

Ex-Judge Noah Davis said:

"I never heard of a motion made before which was to compel the giving of the minutes of a Grand Jury to a person who was not indicted, but whose actions had been considered by that body.

"I think it would be very unwise for a court to compel the minutes to be published in such a case.

"In case of perjury the testimony given before a Grand Jury may be called for, but this is to compare the testimony given previously to that sworn to at the trial."

Ex-Judge William Fullerton said:

"I never heard of such a thing."

Frederic R. Coudert said:

"I have had very little experience in cases of this kind, but I do not remember a person who had not been indicted ever having had the minutes of the Grand Jury given him. I have known cases where the minutes were given the defendant after he had been indicted, and have read the minutes myself in a number of such cases."

Ex-Assistant District Attorney W. Travers Jerome said:

"I have never heard of a case like it. There are two cases where the minutes of the Grand Jury may be called for. The one is where the defendant on trial has not been committed by a Police Magistrate and the defendant wishes to know the testimony that has been given against him, and the other is in a perjury trial, where the testimony given before the Grand Jury is called for that it may be compared with that sworn to at the trial.

"But for the minutes of a Grand Jury to be spread on record in this general way, I never heard of any case in which it was done, and I don't see how it can be done.

"Just suppose, for instance, that the Grand Jury thinks that the police are 'standing in' with the liquor dealers in a certain police district. Witnesses go before the Grand Jury, and, although the case is pretty strong against the Captain of the district, the jury, though thinking that the police and the saloon keepers are standing together, does not indict because the evidence is not quite strong enough. The Police Captain hears of it and he says: 'I'll go before the court and ask the court to give me an order compelling the spreading upon the record of the minutes of that Grand Jury, because the witnesses perjured themselves about me.' If the court gave the permission it would be an easy matter for the Police Captain to make it unpleasant for those witnesses, and