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Criminal Law—Power of Grand Jury to Compel Witnesses to Complete Questionnaire

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and co-ordinated movements proves too slender a reed upon which to support a judgment sending a man to the electric chair.

POWER OF GRAND JURY TO COMPEL WITNESS TO COMPLETE QUESTIONNAIRE

In *People v. Sheriff of New York*[84] relator, who had waived his immunity, was ordered by the Grand Jury to complete a financial questionnaire and to return and swear that the answers therein were true. Although he was willing to give oral testimony concerning the information requested he refused to complete and submit the questionnaire. For this refusal he was held in contempt and imprisoned. In a subsequent *habeas corpus* proceeding he challenged the power of the grand jury to compel other than oral testimony where documentary evidence did not previously exist.

The grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them or furnished by legal documentary evidence.[85] The appellant contended that when he answered all proper questions orally and stated that he had no financial status records already in existence he satisfied the grand jury's mandate, and that to compel the questionnaire in effect required him to create evidence where none already existed.

The Court of Appeals, 4-3, held that the grand jury can compel a witness to answer and submit a written questionnaire if it is reasonably intended to expedite the proceedings.[86]

Since the questions could be asked orally,[87] there is no reason why defendant should not be compelled to record them. The court reasoned that a defendant could obviously not supply the answers from unaided memory, and therefore he could repeatedly delay the proceedings by seeking adjournments to refresh his memory. Such continuing interruptions might so seriously delay the investigation by the grand jury that the defendant would himself be perpetuating an injustice.

The dissent reasoned that Section 248 of the Code of Criminal Procedure, literally construed, disallows compelling a witness to create documentary evidence.[88] Since the grand jury derives its power to obtain evidence from the Legislature, broadening the method of obtaining evidence is properly a legislative function.

Although perjury convictions have been sustained on the basis of these questionnaires, their validity has never been directly challenged.[89] Since the

84. 6 N.Y.2d 487, 190 N.Y. Supp. 641 (1959).

85. N.Y. CODE CRIM. PROC. § 248. An exception exists when the witness is dead, insane, or can't with due diligence be found within the state.

86. *Supra* note 84.

87. People v. Connolly, 253 N.Y. 300, 171 N.E. 393 (1930).

88. N.Y. CODE CRIM. PROC. § 248.
> In the investigation of a charge, for the purpose of indictment, the grand jury can receive no other than: 1. Such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence; . . . ."

89. People v. Workman, 308 N.Y. 668, 124 N.E.2d 314 (1954); People v. O'Brien, 305 N.Y. 915, 114 N.E.2d 470 (1953).

financial assets of the defendants are a pertinent source of inquiry in a proceeding of this type, the grand jury should not be restricted in its investigation of public officials. In *People v. Stern*[90] the court noted that traditionally the grand jury has been afforded the widest possible latitude in the exercise of the powers conferred upon them by the Constitution and Legislature, and these powers should not be curtailed by implication.

In *Allen v. State*[91] the court held that a court has the power not only to compel answers from a witness orally but to require him to perform acts incidental to testifying orally. This explicit authority of a court to compel incidental acts, it is argued, implicitly establishes the existence of an analogous power in the grand jury.

Although the defendant may have reasons for not wishing to produce written evidence as opposed to oral evidence, the Court's conclusion as to the validity of a written questionnaire does not unduly stretch the meaning of Section 248. That this grand jury is investigating public officials, who are subject to special scrutiny, is an additional reason for construing their powers liberally.

PEOPLE'S RIGHT TO APPEAL DISMISSAL OF INFORMATION

The New York Judicial Council, in 1939 and 1942,[92] recommended that Subdivision 3 of Section 518 of the New York Code of Criminal Procedure be amended so as to correct a deficiency which had been pointed out by the decision in *People v. Reed*.[93] In that case the Court held that under the then existing statutory provisions, the People could not appeal from an order made during the trial dismissing an indictment on the ground that it failed on its face to charge a crime, even though the Trial Court's ruling on the sufficiency of the indictment would have been appealable if it had been made prior to the trial. In 1942, the Legislature amended Subdivision 3, so as to allow the People to appeal from the dismissal of an indictment or information "on a ground other than the insufficiency of the evidence adduced at the trial."[94] This amendment was intended to allow the People to appeal from dismissals made on the law regardless of the time of the dismissal.[95]

During the past term the Court of Appeals had occasion to interpret the meaning of Section 518(3) as amended. In *Kramer v. County Court of Suffolk County*[96] the People appealed to the County Court from the dismissal in Police Court of an information for trespass upon privately owned under-

90. 3 N.Y.2d 658, 171 N.Y.S.2d 256 (1958).
91. 183 Md. 603, 39 Atl. 820 (1944).
92. 5TH ANNUAL REPORT OF N.Y. JUDICIAL COUNCIL (1939), at 40, 41; 8TH ANNUAL REPORT OF N.Y. JUDICIAL COUNCIL (1942), at 62, 63.
93. 276 N.Y. 5, 11 N.E.2d 330 (1937).
94. N.Y. SESS. LAWS 1942 c. 832.
95. *Cf.* N.Y. CODE CRIM. PROC. § 518(5), which denies the right of appeal after a verdict of not guilty.
96. 6 N.Y.2d 363, 189 N.Y.S.2d 878 (1959).