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## Criminal Law—Grand Jury Indictment

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## COURT OF APPEALS, 1956 TERM

The majority believed that the only purpose of a uniform traffic ticket was to notify the defendant that he was to appear in court so that he could be charged with a specific crime.<sup>5</sup> Therefore, it could not be classified as an information; for it wasn't an allegation that the defendant was guilty of a designated crime. Since the trial court had acquired jurisdiction over the defendant by virtue of a valid arrest, the dissent viewed the ticket as a pleading and nothing else.<sup>6</sup>

Relying upon *People v. Jacoby*,<sup>7</sup> the majority also stated that an information must be written, in a prosecution for a misdemeanor. As the dissent in the instant case points out however, the defendant's own affidavit was held to be sufficient in that case and therefore it could not be said that the information had to be in any particular form.

The fact that the traffic ticket as an information wasn't verified was also objected to by the majority.<sup>8</sup> Since neither statute nor the common law required that an information be sworn to, in a prosecution for a misdemeanor, this objection was also dismissed by the dissenters.<sup>9</sup>

Although authority may be found to the contrary,<sup>10</sup> the Court in the instant case also held that the lack of a verified information is a jurisdictional rather than a formal defect.<sup>11</sup> Therefore, not even a plea of guilty could waive the requirement of verification.

The purpose of the information is to inform the defendant of the nature of the charge against him so that he may prepare for trial and also to prevent him from being tried for the same offense a second time.<sup>12</sup> Since a traffic ticket would seem to accomplish that result in the instant case, it is hard to say that his rights would be violated by use of the traffic ticket as an information.

### Grand Jury Indictment

In *People v. Salerno*,<sup>13</sup> a grand jury directed the district attorney to proceed with the filing of an information charging misdemeanors. Under a plea of not

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5. *City of Buffalo v. Newbeck*, 209 App. Div. 286, 204 N.Y. Supp. 737 (4th Dep't 1924).

6. *People v. Belcher*, 302 N.Y. 529, 99 N.E.2d 874 (1951).

7. 304 N.Y. 33, 105 N.E.2d 613 (1952).

8. *People ex rel. Livingston v. Wyatt*, 186 N.Y. 383, 79 N.E. 330 (1906).

9. *Merrill v. United States*, 6 F.2d 120 (9th Cir. 1925).

10. *City of Buffalo v. Murphy*, 228 App. Div. 279, 239 N.Y. Supp. 206 (4th Dep't 1930).

11. *Albrecht v. United States*, 273 U.S. 1 (1926).

12. *People v. Zambounis*, 251 N.Y. 94, 167 N.E. 183 (1929).

13. 3 N.Y.2d 175, 164 N.Y.S.2d 720 (1957).

guilty defendant moved successfully to have the charge prosecuted by indictment.<sup>14</sup> The same grand jury returned a true bill upon the same counts as contained in the information, but without hearing the evidence against defendant a second time. Defendant sought reversal of his conviction because of this failure of the same grand jury to recall the same witnesses who had previously testified before it, or to have their testimony re-read. This is an issue of first impression before the Court of Appeals.<sup>15</sup>

The grand jury had both the power and the duty to inquire into the conduct of defendant.<sup>16</sup> An accused has the right to move to dismiss an indictment based on illegal or insufficient evidence,<sup>17</sup> but there is a presumption that the indictment has been legally found until the contrary is shown.<sup>18</sup> It has been held that a superseding indictment is valid though certain witnesses were not reexamined when both indictments were found by the same grand jury.<sup>19</sup>

In affirming the conviction the Court here held that "the grand jury might have refused to indict and were empowered to indict at least for the same crimes originally stated in the information." Analogizing the indictment replacing the information here to the superseding indictment upheld in prior cases the Court has established a point of law likely to withstand assault. It would be an obvious absurdity to require the grand jury to rehear the very testimony it has once acted upon. This is especially so in the absence of any showing that the defendant was substantially injured.

### Revocation Of Driver's License

Section 71 of the New York Vehicle and Traffic Law makes revocation of an operator's license mandatory upon the third speeding conviction within eighteen months.<sup>20</sup>

Section 335-a of the New York Code of Criminal Procedure provides that magistrates, at the time of arraignment and before accepting a plea, must warn all residents of this state charged with traffic violations that a plea of guilty is

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14. N.Y. CITY CRIM. CTS. ACT §31(1)(c).

15. The same issue has been affirmed against a defendant, without opinion, in *People v. Wasserberger*, 1 A.D.2d 952, 151 N.Y.S.2d 610 (1st Dep't 1956), and *People v. Gertner*, 2 A.D.2d 960, 158 N.Y.S.2d 749 (1st Dep't 1956).

16. N.Y. CODE CRIM. PROC. §245; *People v. International Nickel Co.*, 155 N.Y. Supp. 156 (County Ct. 1914), *aff'd*, 168 App Div. 245, 155 N.Y. Supp. 295 (2d Dep't 1915), *aff'd*, 218 N.Y. 644, 112 N.E. 1068 (1916).

17. *People ex rel. Hirschberg v. Supreme Court of New York*, 269 N.Y. 392, 199 N.E. 634 (1936).

18. *People v. Sweeney*, 213 N.Y. 37, 106 N.E. 913 (1914); *People v. Feld*, 305 N.Y. 322, 333, 113 N.E.2d 440, 445 (1953).

19. *People v. Falasco*, 121 Misc. 538, 201 N.Y. Supp. 275 (Sup. Ct. 1923); *cf. Commonwealth v. Clune*, 162 Mass. 206, 213, 38 N.E. 435 (1894).

20. N.Y. VEHICLE AND TRAFFIC LAW §71(2)(c).