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CRIMINAL LAW-PROCEDURE-RIGHT OF DEFENDANT TO INSPECT GRAND JURY MINUTES

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CRIMINAL LAW—PROCEDURE—RIGHT OF DEFENDANT TO INSPECT GRAND JURY MINUTES—Defendant was indicted for murder by a grand jury. The trial court denied a motion by defendant requesting that the district attorney be ordered to furnish him with a transcript of the evidence offered before the grand jury. On appeal, *held*, affirmed. It was within the discretion of the trial court to grant or refuse the motion. *Commonwealth v. Galvin*, (Mass. 1948) 80 N.E. (2d) 825.

The principal case is in accord with the great weight of authority, to the effect that examination of grand jury minutes is not a matter of right, but lies within the discretion of the trial court.¹ In absence of statute,² most courts will not allow the defendant to examine the minutes of the grand jury unless there is evidence of irregularity, such as fraud, misconduct, corruption, an allegation that the grand jury was improperly constituted, or a positive allegation that there was no evidence of any sort before the grand jury.³ New York courts, however, will allow the defendant to inspect the minutes of the grand jury when there is either a lack of evidence to support the indictment⁴ or an invasion of some constitutional right of

¹ *United States v. Oley*, (D.C. N.Y. 1937) 21 F. Supp. 281; 27 L.R.A. 558 (1910).

² At least two states have statutes giving the defendant a right to a copy of the minutes of the grand jury. Iowa Code (1946) §772.4 states: "The clerk of the court must, within two days after demand made, furnish the defendant or his counsel a copy thereof without charge, or permit the defendant's counsel, or the clerk of such counsel, to take a copy." Minn. Ann. Stat. (1945) §628.04 is a similar provision.

³ *United States v. National Wholesale Druggists' Assn.*, (D.C. N.J. 1945) 61 F. Supp. 590; *United States v. Proctor and Gamble Co.* (D.C. Mass. 1942) 47 F. Supp. 676. But see *United States v. Antonelli Fireworks Co.* (D.C. N.Y. 1943) 53 F. Supp. 870, holding that a plea that there was no legal evidence to support indictment is insufficient to warrant courts in aiding defendant to explore the government's case before trial.

⁴ *People v. Levine*, 161 Misc. 336, 291 N.Y.S. 1001 (1936) (a motion to secure minutes should be granted to enable defendant to move to dismiss indictment for lack of evidence). Contra: *People v. Glasser*, 60 Misc. 407, 112 N.Y.S. 321 (1908).

the defendant.⁵ The result reached in New York, as compared with the general rule, may be explained by the fundamental difference in the power of courts to investigate the fact situations before a grand jury. Some states hold that courts may inquire into the legality of evidence before the grand jury but not into the sufficiency of the evidence;⁶ others hold that the courts cannot examine either the nature or quantity of evidence on which a grand jury has based its accusation.⁷ But in New York, under statutory provisions, the grand jury can receive only legal evidence and may indict only when the evidence before them, if unexplained or uncontradicted, would warrant a conviction by the trial jury.⁸ Permission to the defendant to inspect the grand jury minutes is based primarily on the theory that criminal procedure is provided largely for the protection of the individual and that it is unfair to allow the state to have a transcript of the evidence heard before the grand jury without allowing the accused the same privilege.⁹ While it does appear that the defendant would be benefited by receiving the state's testimony, this must be weighed against public peace and welfare. Courts and writers who believe the defendant should not be permitted to inspect the minutes of the grand jury start with the premise that if he is allowed to do so, secrecy, an underlying principle of the indictment method of accusation, is destroyed.¹⁰ The state cannot compel the defendant to submit his private papers for use or examination, for he cannot be required to testify or furnish evidence against himself. Therefore, it may be contended that the accused should not be able to examine the papers of the prosecution.¹¹ Furthermore, counsel for the accused, if allowed a copy of the minutes of the grand jury, can use it to delay trial by questioning every witness regarding his testimony before the grand jury.¹² Only if the state had a right to a new trial or some means of vacating verdicts of acquittal obtained by fraud or perjury, would a rule which exposes the state's evidence to the accused before trial seem to be justified.¹³

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⁵ *People v. Teal*, 60 Misc. 517, 113 N.Y.S. 925 (1908) (inspection should be allowed where application showed reasonable cause to believe that jury received other than legal evidence to extent sufficient to invalidate indictment). Also, see *Hirschberg v. Supreme Court of New York*, 269 N.Y. 392, 199 N.E. 634 (1936); *People v. May*, 158 Misc. 488, 287 N.Y.S. 162 (1936).

⁶ 27 MICH. L. REV. 955 (1929); *People v. Price*, 371 Ill. 137, 20 N.E. (2d) 61 (1939).

⁷ 27 MICH. L. REV. 955 (1929); *State v. Dallao*, 187 La. 392, 175 S. 4 (1937).

⁸ N.Y. Criminal Code (1945) §§256, 258.

⁹ *Turk v. Martin*, 232 Ky. 479, 23 S.W. (2d) 937 (1930).

¹⁰ But see *People v. Foody*, 38 Misc. 357, 77 N.Y.S. 943 (1902), holding that allowing defendant to inspect the minutes of the grand jury does not unduly invade the secrecy of the proceedings.

¹¹ *State v. Rhoads*, 81 Ohio St. 397, 91 N.E. 186 (1910).

¹² MORSE, *A SURVEY OF THE GRAND JURY SYSTEM* 243 (1931). In this survey it was also found that many judges were not in favor of having a transcript of grand jury minutes made, because they feared the defendant might secure a copy and prepare a false defense which could not be shaken.

¹³ See THOMPSON AND MERRIAM, *JURIES* 679 (1882).