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CRIMINAL LAW AND PROCEDURE — VOLUNTARY COMMUNICATION TO GRAND JURY AS CONTEMPT — Defendant wrote two letters to the grand jury, then in session, asking leave to appear before it to present evidence of a conspiracy, described therein in highly inflammatory language, between a newspaper, the county assessor and the state's attorney to defraud the state of many millions of revenue by the illegal omission of the newspaper's personal property from the county tax rolls. The state's attorney filed an information incorporating these letters. The trial court found that defendant was guilty of criminal contempt. On appeal, defendant contended that this conviction deprived him of his constitutional right of free speech. *Held*, the letters constitute contempt of court as an unauthorized interference with the administration of justice, even though the letters do not refer to cases pending before the grand jury. *People v. Parker*, 374 Ill. 524, 30 N. E. (2d) 11 (1940),[1] cert. den. 313 U. S. 560, 61 S. Ct. 836 (1941).

The court's ruling is in accord with the view of a majority of the courts which have passed on the question: voluntary communications to a grand jury constitute criminal contempt both at common law[2] and under "embracery"

[1] This case marks the fourth consecutive rebuff handed the defendant Parker by the Illinois courts in his "grudge" battle against the Chicago Tribune. See also People ex rel. Parker v. Board of Appeals of Cook County, 367 Ill. 559, 12 N. E. (2d) 666 (1938); People ex rel. Parker v. Whealan, 370 Ill. 243, 18 N. E. (2d) 234 (1939); Parker v. Kirkland, 298 Ill. App. 340, 18 N. E. (2d) 709 (1939).

[2] A leading case is Commonwealth ex rel. Jack v. Crans, 2 Clark 172 (3 Pa. L. J. 442) (1844), which stated (p. 195): "the conveying of such a communication to a grand jury is a criminal misdeameanor, being an illegal obstruction of the administration of public justice. . . . [it is] indictable at common law, and punishable by fine

statutes to be found in many states.[3] The rejection by the court of defendant's argument that this judgment deprived him of his constitutional guaranty of free speech appears to be sound. It may happen that a politically minded or dishonest prosecutor will refuse to carry a citizen's well-founded complaint before the grand jury. But in that event an alternative remedy is immediately available: the citizen can make a written complaint on oath before an examining magistrate.[4] Thus at issue is a denial of only one particular mode of exercising the constitutional guaranty of free speech. A majority of the courts insist that such a denial is imperative in the public interest, that it is essential to an efficient jury system.[5] Quaere, however, whether the court made a wise choice of public policy in the principal case. Here defendant's letter to the grand jury contained charges against two public officials. It is in the investigation and prosecution of misconduct by public officials that the much criticized grand jury can perform its most valuable function; its proceedings are secret, need not be controlled by a public officer nor be undertaken only after a showing of probable cause as is

or imprisonment, according to the urgency of the particular case." A leading modern case is Commonwealth v. McNary, 246 Mass. 46, 140 N. E. 255 (1922). See 2 WHARTON, CRIMINAL PROCEDURE, 10th ed., §§ 1295, 1309 (1918); 29 A. L. R. 489 (1924).

[3] Attention should be called to the varying treatment accorded these similar statutes by the several state courts. *New York:* Bergh's Case, 16 Abb. Pr. N. S. 266 (1875); People v. Sellick, 4 N. Y. Cr. 329 (1886); People v. Glen, 64 App. Div. 167, 71 N. Y. S. 893 (1901). *New Jersey:* State v. Beam, 4 N. J. Misc. 222 at 223, 224, 132 A. 336 (1926): "Embracery was a crime at common law. Our statute is declaratory of the common law and merely amplifies it. . . . New York and Pennsylvania, under practically similar statutes, have held there may be an embracery of a grand juror." But *contra: Maryland:* Hitzelberger v. State, 173 Md. 435, 196 A. 288 (1938), holding its statute did not deal with the constructive contempt done by voluntarily communicating with the grand jury. See 12 AM. JUR. 403, 424 (1938); 112 A. L. R. 319 (1938). There is a useful digest of all state laws on contempt in THOMAS, PROBLEMS OF CONTEMPT OF COURT 99-118 (1934). Voluntary communications with a federal grand jury are made a statutory offense by 18 U. S. C. (1935), § 241. See Duke v. United States, (C. C. A. 4th, 1937) 90 F. (2d) 840, cert. den. 302 U. S. 685, 58 S. Ct. 33 (1937), rehearing denied 302 U. S. 650, 775, 58 S. Ct. 135, 261 (1938); and the frequently cited Charge to Grand Jury by Justice Field, (D. C. Cal. 1872) 2 Sawy. 667, 30 F. Cas. 992, No. 18,255.

[4] United States v. Kilpatrick, (D. C. N. C. 1883) 16 F. 765 at 769.

[5] "Let any reflecting man, be he layman or lawyer, consider of the consequences which would follow, if every individual could at his pleasure throw his malice or his prejudices into the grand jury room, and he will of necessity conclude that the rule of law which forbids all communications with grand juries engaged in criminal investigations, except through the public instruction of courts, and the testimony of sworn witnesses, is a rule of safety to the community." Commission v. Crans, 2 Clark 172 at 193 (3 Pa. L. J. 442) (1844). See also Grand Jury Charge, (D. C. Cal. 1872) 2 Sawy. 667, 30 F. Cas. 992, No. 18,255.

That the courts will not punish as a criminal contempt libellous utterances about a grand jury in relation to acts already done by them in their official capacity, see Storey v. People, 79 Ill. 45 (1875); cf. People v. Severinghaus, 313 Ill. 456, 145 N. E. 220 (1924).

the case with the granting of a magistrate's warrant.[6] The effect of this decision is to make it much more difficult for private citizens to instigate a grand jury investigation and prosecution of misconduct by public officials. Parenthetically it should be noted that it is not at all clear that the court's ruling is the sounder choice of public policy even as to communications dealing with offences by private citizens. Not all courts agree that such voluntary communications to a grand jury hinder the administration of justice.[7] Granted that "grudge" letters, as in the instant case, may be a nuisance to members of a grand jury, it is difficult to believe they will be so material a deterrent to the efficient working of a grand jury as to merit a conviction for criminal contempt.

James K. Lindsay

[6] Konowitz, "The Grand Jury as an Investigating Body of Public Officials," 10 ST. JOHN'S L. REV. 219 (1936); Morse, "A Survey of the Grand Jury System," 10 ORE. L. REV. 101, 295 at 333 (1931).

[7] "The witness had the undoubted right to go before the grand jury voluntarily and disclose his knowledge of facts in the case. As a good citizen it was his duty to do so. No one can be excused for withholding knowledge of a crime from the public until he is summoned to give his testimony of its commission." State v. Stewart, 45 La. Ann. 1164 at 1167, 14 So. 143 (1893). See also: In re Lester, 77 Ga. 143 (1886); Hott v. Yarborough, 112 Tex. 179, 245 S. W. 676 (1922); King v. Second Nat. Bank, 234 Ala. 106, 173 So. 498 (1937).