

16th Year of Publication

Readers Digest

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OCTOBER 1937

25¢ a Copy

\$3 a Year

The People's "Big Stick"

Adapted from *The New Republic*

J. C. Furnas

LUCKY" Luciano was put behind bars for the rest of his life because he was czar of New York's vice racket. The power that put him there, along with 100 other racketeers, was that docile old juridical wheel-horse, the grand jury.

The notable fact is this: the substantial citizens of practically every community in the United States legally have a weapon with which to attack civic corruption in any form as effectively as was done in New York. For the famous Dewey prosecution was initiated not by an elected public official, but by a group of independent citizens — among them eight merchants, three bankers, three insurance men, two manufacturers, a warehouseman, a butcher and an engineer — acting under powers as old as common law and as fundamental as freedom of speech.

The grand jury was an established institution of English law long before the Norman conquest, and was originally designed to protect the individual from unjust prosecution by agents of the

Crown. It met in secrecy, was accountable to no one for its actions, and had the power of accusing, or indicting, any evildoer on evidence known to its members. Thus as both shield and weapon for the common citizen the grand jury survived many centuries of English history and was adopted in the federal and all the state constitutions in America.

Today its use for the routine indictment of criminals is familiar. But its potentially greater function, as an independent body of representative citizens inquiring into the condition of their government, has been too commonly neglected. As a board of inquiry, it may summon witnesses and public officials, who, because the sessions are secret, may testify freely without fear of reprisal. It may instruct the district attorney to gather evidence; it can call him in and kick him out of its sessions; it can go over his head, and, if his conduct is wholly improper, indict him for malfeasance in office. So long as it is looking for evidence of crime — which takes in immense territory — it can dig

into anything without so much as by your leave from judge, district attorney, governor or political boss.

In this power to conduct general investigations lies the real dynamite of the modern grand jury. Many states, notably California and Georgia, have adopted "auditing" grand juries, which dispense entirely with routine indictment of criminals, and which convene automatically every six months for the sole purpose of dealing with matters of general welfare. Such a grand jury is fully aware that its job is to dig out incriminating dirt wherever it may be suspected. California's auditing grand juries hire their own independent accountants to go over public records. In Georgia they also check voting lists and tax assessments.

When the system was installed in Michigan for counties over 200,000 population, the Detroit police noted with amazement that the cream of the local gangsters left town. It worked so well, in fact, that the local political machine finally managed to have it stricken from the statute books!

How does it happen, then, that this potent weapon has not been used more often before? Because ordinary citizens, swept as grand jurors into an unfamiliar world of juridical procedure, are not aware of their powers. Judges and district attorneys frequently take

pains to see that they remain uninformed, for nothing can throw a well-greased political machine so completely out of kilter as a grand jury which knows its strength.

New York's "runaway grand jury" of March 1935, which was directly responsible for the Dewey prosecution, is an object lesson in public service. To appreciate its achievement, however, we must realize the difficulties that faced it. Vast though its powers are, no grand jury can accuse a man of a crime unless it has evidence which it believes sufficient to convict him. It may fuss and fume, protest and abhor and set up a commendable clamor, but without evidence, it cannot indict.

The grand jury has the power, under the law, to go out and gather such evidence, and many have done just that. But investigating a complicated crime structure requires a trained, full-time staff. For the bulk of its evidence, therefore, the grand jury looks to the district attorney, whose sworn duty is to gather such evidence.

Among the matters casually brought to the March grand jury's attention by the district attorney were certain facts bearing on racketeers in New York City. The grand jury was evidently not convinced that the Tammany district attorney had done his utmost to gather evidence against the racketeers; this became increasingly

apparent when they asked him to assign a satisfactory special prosecutor to rackets. Normally, the matter might have ended here.

But this grand jury knew its rights. It sent a scorching communication to the governor of the state, demanding a special prosecutor of caliber sufficient to handle the job. The story filled the papers; the grand jury's accusations shook the state. Jurors' lives were threatened, but they refused to be scared off. And the Governor gave them Thomas E. Dewey.

Its job done, the March grand jury was dissolved. And Dewey's corps of investigators set methodically to work. Their findings went to special grand juries; and a procession of the biggest, richest, most vicious, and supposedly invulnerable racketeers in the business of crime started on its way to jail. The grip of fear in which the lords of crime had held the city was broken. The whole thing was started because a group of private citizens, serving as a grand jury, knew their powers.

That they did was no mere happenstance. It was the direct result of a movement started back in 1913, when an organization known as the Grand Jury Association of New York County was formed to "disseminate knowledge to grand jurors of their duties and obligations." Today the Association exercises national influence and is thoroughly unpopular

with all our worst people. Grand jurors are invited to join at the time their names are drawn for service. Its roster includes some of the most important names in the city. It publishes a magazine, the *Panel*, which has a national circulation, and it conducts an unrelenting campaign to educate jurors to their powers, and to keep before the successive grand juries the matters that most urgently need attention. As a private organization with the public good at heart, it is legally entitled to recommend names for the grand jury lists. In this way it has aided immensely in improving the caliber of New York grand juries.

The Grand Jury Association has successfully pioneered in bringing to light such various matters as bail bond reforms, "fences" for stolen goods, a new courthouse and jail, a central fingerprint bureau, and uniform state felony laws. And best of all, it has inspired imitation; similar associations now exist in all five counties of New York City and in eleven other cities. For eight years the Association was spurred and guided by Robert Appleton, a retired publisher who is now its honorary president. The present head is Lee Thompson Smith, foreman of the famous "runaway grand jury."

Largely because of the Association's steady propaganda, grand juries elsewhere are kicking over

the traces. When nobody in New Jersey would touch the politically "hot" Wendel kidnaping case, aftermath of Governor Hoffman's intervention in the Hauptmann execution, a federal grand jury in New Jersey held its own investigation, indicted the chief suspects, and had the satisfaction of seeing them convicted. In San Francisco a grand jury, as I write, is making it so hot for the local police administration that two of its three police commissioners have resigned under fire.

After the exposure of the notorious Drukman case in Brooklyn, the grand jury was shocked at the political ramifications of the case. When they disbanded, the jurors, as private citizens, brought formal charges against the district attorney. Later, when the governor of the state exonerated him, they paid their own expenses to Albany to protest. It was sensational newspaper copy, and resulted in a salutary public airing of the affairs of the district attorney's office.

A Cleveland grand jury in 1933 was presented with a routine case of a taxi driver being beaten up by four arrogant gunmen. This grand jury did not confine itself to the case at hand; it traced the gunmen's connections, revealed the whole crime structure of Cleveland, and brought about a major exodus of thugs and an extensive shake-up in local officialdom.

The skeptic might ask if politi-

cians, having succeeded in corrupting the rest of the local government, could not easily "rig" a grand jury to their liking. In most states, this danger is negligible. In a body of 23 men representing the community's best you may "reach" two or three; your chances of reaching 12 are extremely remote.

The method of selecting grand jurors varies somewhat from state to state, but that employed in New York is representative enough to serve as an illustration. At their annual meeting, the supervisors of each county prepare a list of 300 names of citizens definitely known to be persons of superior character. These names are written on separate slips of paper and deposited in a box. When a grand jury is required, 50 names are drawn by the county clerk, in the presence of the sheriff and a county judge. Those drawn are summoned to the court by the sheriff; 23 are sworn in as jurors, the rest excused. In some states, such as Illinois, selection is in the hands of county jury commissioners. In Illinois these commissioners are selected by a majority vote of all the judges in the state.

Once sworn in, these 23 men become the regular grand jury for that county for that term of court, usually a month. To them the district attorney presents evidence which he has gathered against criminals. If an indictment is

voted, the accused must be brought to trial. If the jury suspects that the district attorney is withholding evidence, it may take any steps within its very extensive powers. And though normally dissolved when its own term of court is ended, it may if it wishes remain in session until it has satisfactorily completed the business before it.

Occasionally there are cases so involved that the regular grand jury could not hear all the evidence and do anything else during its term. In this event, a special grand jury is called for that case alone. There have been as many as seven grand juries simultaneously in New York County. One was in session for seven months.

If passages of this article have dealt severely with district attorneys, it is not to infer that all district attorneys are hirelings of crime. As Courtney Riley Cooper has pointed out,* there are a tremendous number of honest district attorneys. But as he has further pointed out, "no office on earth permits of so much crookedness without danger of detection; so much political pressure; such opportunity to give every evidence of integrity, yet to doublecross honest citizenship." The strain on

the human factor is too great for the peace of mind of those who respect clean government.

With ancient common sense, the common law has handed down to us a check: a body of 23 "good and lawful men" with appropriate powers. Out of six years' experience with grand juries before he undertook to clean up New York, Thomas E. Dewey says, "I am profoundly convinced that the grand jury, in coöperation with honest and vigorous prosecution, can play a vital part in crushing the structure of organized crime." It is up to the individual grand juror to see that "honest and vigorous prosecution" becomes a fact.

There is your answer to the citizen who shrugs his shoulders at political rottenness and asks what a decent citizen can do about it anyway — and then moves heaven and earth to "get out of it" when called for grand jury service. Actually, if he but knew it, the decent citizen can do more than anyone else in the world. Service on a grand jury demands the best any man has to offer. It demands judgment and restraint, as well as zeal — for power, poorly managed, can run amuck of its own momentum. The weapon is there, ready-made, and it is a deadly one. All we have to do is to use it.

* See "Here's to Crime," The Reader's Digest, June, '37, page 109.

