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Waiver of Indictment in Texas

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WAIVER OF INDICTMENT IN TEXAS

THE unnecessary difficulties in the administration of criminal justice in Texas which have been occasioned by the requirement that all crimes of the grade of felony are to be prosecuted upon grand-jury indictment, have been recognized for several decades.[1] Perhaps most frequently, criticism has been directed with regard to the formal requirements and the insistence upon technicality in the application of statutes governing indictments rather than with regard to the use of the indictment as a method of proceeding in felony prosecutions.[2] While it cannot be said that

[1] At a meeting of the District Judges' Association of Texas, held at Austin in December, 1924, the Committee on Criminal Procedure recommended that the Texas Constitution and statutes be amended so as to permit the prosecution of felonies by complaint and information, thus eliminating grand jury indictments except where deemed necessary by the district judge within his discretion. In supporting this recommendation, Judge J. O. Woodward of Coleman, Texas, said in part: "I do not favor... any effort to abolish the grand jury, but I do favor as wise and wholesome, the amendment of Section 10 of Article I of the Bill of Rights and the statutes which follow, so as to permit the presentation of felonies by complaint and information, leaving the grand jury to be called when, in the opinion of the district judge, it becomes necessary. This one amendment would, in my section of the state, permit the trial of felony cases, ordinarily, at the first term of court after the commisson of the offense, but as we now await the returning of an indictment by a grand jury, we are confronted ordinarily with a six months' delay before the case can be called for trial...." See *Report* (1924) 3 TEX. L. REV. 165, 172.

[2] "... in favour of life great strictnesses have been in all times required in points of indictments, and the truth is, that it is grown to be a blemish and inconvenience in the law, and the administration thereof; more offenders escape by the over easy ear given to exceptions in indictments, then by their own innocence, and many times gross murders, burglaries, robberies, and other heinous and crying offenses, escape by these unseemly niceties to the reproach of the law, to the shame of the government, and to the encouragement of villainy, and to the dishonour of God." HALE, HISTORY OF THE PLEAS OF THE CROWN (1st Am. ed. 1847) 193. This statement has been quoted or referred to by many recent writers. See, *e. g.*, Perkins, *Short Indictments and Informations* (1929) 15 A. B. A. J. 292.

The degree of certainty usually required is that which will apprise the accused of the offense charged, enable the court to pronounce judgment on conviction, and enable the accused to plead the judgment in bar of any further prosecution for the same offense. This is further embodied in the statutes. TEX. CONST. (1876) Art. I, § 10; TEX. CODE CRIM. PROC. (1925) arts. 398, 405.

In its interpretation of the Constitution and statutes, the Texas Court of Criminal Appeals has seemingly sacrificed justice for formalism on more than one occasion, as

such criticism has been unwarranted,[3] it may be hoped that any legislative or judicial reconsideration of the problem will not be limited by the scope of such criticism, but will extend as well to the question of the necessity of the indictment as a procedural step in the felony prosecution. Primarily the purpose of this note, however, is to inquire whether, within the existing procedure requiring indictments generally, the ends of criminal justice would be served by permitting a waiver of the indictment in felony proceedings under certain circumstances. To ascertain whether the social policy supporting the grand jury method of proceeding in felony cases is compatible with a waiver under any circumstances requires a brief consideration of the early use and purpose of the indictment.

Traditionally, the accusation of any offense of felony grade has been by presentment or indictment[4] by a grand jury. The in-

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indicated by a brief glance at several of the frequently cited cases. Thus, prior to the Missouri Supreme Court's decision in the famous "The" case, State v. Campbell, 210 Mo. 202, 109 S. W. 706 (1907), where a conviction of rape was reversed because the indictment failed to conclude "against the peace and dignity of *the* State," the Texas Court of Appeals had already reversed convictions for less serious offenses on the same ground. Thompson v. State, 15 Tex. App. 168 (1883). In Fleming v. State, 62 Tex. Crim. Rep. 653, 139 S. W. 598 (1911), a conviction of a bank officer for accepting a deposit "after the bank was insolvent" was reversed because the indictment did not sufficiently aver that the bank was insolvent at the time the deposit was received. These technical requirements still dominate the Texas decisions as indicated by the recent case of Blake v. State, 180 S. W. (2d) 351 (Tex. Crim. App. 1944), wherein an indictment for theft by the bailee under Texas Penal Code (1925) art. 1429, alleging possession of cattle in the accused by virtue of a contract of bailment, was held insufficient for lack of details of the bailment. The notorious decision of the Texas court in Gragg v. State, 186 S. W. (2d) 243 (Tex. Crim. App. 1945), in which a conviction for murder was reversed because the indictment failed to state that the victim was drowned *in water*, exemplifies the extreme to which formalism may be extended at the expense of substantial justice.

An even more striking recent example of such mediaeval insistence upon formality in the indictment has received wide and just criticism by the lay press. The Texas Court of Criminal Appeals, with Justice Graves dissenting, reversed a conviction of murder in the case of Northern v. State, ... Tex. Crim. Rep. ....., ... S. W. (2d) ..... (decided May 21, 1947) for the reason that the indictment failed to allege that the defendant killed the victim by kicking and stomping her *with his feet*.

[3] See Perkins, *Absurdities in Criminal Procedure* (1926) 11 IOWA L. REV. 297.

[4] Today there is no apparent distinction between a presentment and an indictment, but the latter term is more commonly used to identify all accusations of crime preferred by a grand jury. Originally, however, the presentment was a charge made by the grand jury on its own initiative, as distinguished from the indictment which was brought by the prosecutor and voted a "true bill" by the grand jury. See McClintock, *Indictment By A Grand Jury* (1942) 26 MINN. L. REV. 153, 156.

formation as a means of accusation was relegated to the less serious crimes classed as misdemeanors.[5] The grand jury, first used in England as a device through which information was obtained from local villagers concerning matters of interest to the Crown,[6] was a group of citizens that met occasionally to discuss the actions of their neighbors with a view to ascertaining those responsible for crimes committed in their community. However, as early as the first revolts against the Stuarts, the grand jury had begun to be used for the purpose of protecting subjects against arbitrary accusations by the Crown.[7] As a result of reliance upon the grand jury procedure in the American colonies for the same purpose, the Fifth Amendment to the Federal Constitution was adopted, providing that "No person shall be held to answer for a[n] ... infamous crime, unless on a presentment or indictment of a grand jury. . . ."[8] Most of the older states incorporated similar guarantees into their constitutions,[9] but several adopted an alternative method of proceeding either upon indictment or information in felony cases.[10]

The requirement that felonies be prosecuted by indictment has been followed in Texas from the time of the outbreak of the revolution against Mexico. The Consultation held in San Felipe de Austin in 1835, in Article VII of its "Plans and Powers of a Provisional

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[5] See 4 BL. COMM. *309; 1 BISHOP, NEW CRIMINAL PROCEDURE (2d ed. 1913) §§ 141, 142; see also discussion by Mr. Justice Gray in *Ex parte* Wilson, 114 U. S. 417 (1885).

The Administration of Justice (Miscellaneous Provisions) Act, 1933, 23 & 24 Geo. V, c. 36, § 1 abolished the grand jury in England except in the prosecution of high treason and certain other offenses triable in the King's Bench Division. The provisions of this section were made not applicable to indictments for certain offenses found by grand juries in the county of London and the county of Middlesex.

[6] See 2 POLLOCK & MAITLAND, HISTORY OF ENGLISH LAW (2d ed. 1898) 641, 649; Note (1929) 24 ILL. L. REV. 319, 320.

[7] For a discussion of the origin and early use of the indictment in charging criminal offenses with reference to its present purpose and desirability, see McClintock, *Indictment By A Grand Jury* (1942) 26 MINN. L. REV. 153.

[8] U. S. CONST., AMEND. V.

[9] 1 BISHOP, NEW CRIMINAL PROCEDURE (2d ed. 1913) § 144.

[10] *Ibid.* For an account of some of the modern practices whereby indictments by grand juries are not deemed necessary in the prosecution of felony offenses, see (1920) 4 J. AM. JUD. SOC. 77.

Government," adopted the procedural as well as the substantive aspects of the common law.[11] The Constitution of 1845 used the word "indictment;"[12] acting under this Constitution, the Legislature proceeded to simplify the use of the indictment by abolishing some of the technicalities which attended its use at common law.[13] It is regrettable that in the codification of the Penal Code and the Code of Criminal Procedure in 1856, based upon the work of Edward Livingston,[14] the archaic common-law indictment was left untouched. The codifiers omitted Livingston's numerous and greatly simplified forms of indictment for fear that their inclusion might provoke the Legislature into abandoning the entire project. It was in this enactment that the indictment was defined and its requisites were prescribed.[15] This definition has been continued to the present, and the existing requisites of a valid indictment are substantially the same as those of the 1856 Code.[16]

With the adoption of the "Common Sense Indictment Act" in 1881,[17] Texas advanced a half-century beyond the rest of the English-speaking world, for a time at least. This measure declared sufficient an indictment which charged an offense in ordinary and concise language in such a manner as to enable persons of common understanding to know what was meant. There were also included in the Act a general form and specific forms for charging the commission of twenty-seven named offenses.[18] These forms were

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[11] 1 LAWS OF TEXAS (Gammel, 1898) 540.

[12] TEX. CONST. (1845) Art. I, § 8.

[13] The Legislature abolished the necessity of using immaterial phrases such as "force and arms," setting out the value of the instrument causing death, and other formal requisities. Tex. Laws 1854, c. 49, § 66, 3 LAWS OF TEXAS (Gammel, 1898) 1502.

[14] For an interesting and informative discussion of the part that Edward Livingston played in the creation of the codes and their adoption in Texas, see Wilkinson, *Edward Livingston and the Penal Codes* (1922) 1 TEX. L. REV. 25.

[15] TEX. CODE CRIM. PROC. (1857) arts. 394-399.

[16] TEX. CODE CRIM. PROC. (1925) art. 396.

[17] 9 LAWS OF TEXAS (Gammel, 1898) 152. These appear in the present Code of Criminal Procedure (1925) as articles 405-12.

[18] *Id.*, § 11.

couched in very broad terms, *e. g.*, the charge for burglary being "A. B. did break and enter the dwelling house of C. D., with intent to steal."[19] No provision was made for a bill of particulars, but it was necessary that all the facts constituting the offense as defined by law should be proved.[20] The Act went further in some respects than even the modern Code of Criminal Procedure adopted by the American Law Institute in 1930.[21] It has often erroneously been stated that the Act was held unconstitutional; actually its general form has been upheld, and only five forms for specific crimes have been held insufficient to meet the constitutional requisites.[22] The other forms ceased to be used, however, and in later revisions of the Code of Criminal Procedure the practice of providing forms has been discontinued. Prosecutors have come to depend largely upon forms provided by a former justice of the Texas Court of Appeals,[23] but it may be suggested that these are unnecessarily long and technical and are less effective than the shorter form to advise the defendant of the offense with which he is charged.[24]

In other jurisdictions the use of the indictment has diminished

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[19] *Id.*, § 11, form 20.

[20] *Id.*, § 12.

[21] Section 16 of the Act stated that "Matters of which judicial notice is taken (among which are included the authority and duties of all officers elected or appointed under the general laws of this State), and presumptions of law need not be stated in an indictment;" this was substantially carried forward as article 411 of the Texas Code of Criminal Procedure of 1925. For a comprehensive discussion of the Texas criminal court system with reference to the use of indictments, see Carter, *The Texas Court of Criminal Appeals* (1933) 11 TEX. L. REV. 301.

[22] Gabrielsky v. State, 13 Tex. App. 428 (1883) (perjury); Allen v. State, 13 Tex. App. 28 (1882) (aggravated assault); Brinster v. State, 12 Tex. App. 612 (1882) (rape); Rodriguez v. State, 12 Tex. App. 552 (1882) (burglary); Williams v. State, 12 Tex. App. 395 (1882) (theft).

[23] WILLSON, TEXAS CRIMINAL FORMS (5th ed. 1930).

[24] For an analysis of some of the present problems of Texas criminal procedure in which the author compares forms of indictment for the accusation of a few common offenses prescribed by the English Indictment Act of 1915, the Code of Criminal Procedure of the American Law Institute, and the New Federal Rules of Criminal Procedure, see Potts, *New Rules of Criminal Procedure* (1945) 23 TEX. L. REV. 215.

considerably[25] as it has become less necessary. The integration of law enforcement agencies renders negligible the accusatory usefulness of the grand jury. Under modern practices, its function has so largely come to be that of a rubber stamp for the prosecuting attorney[26] that it is extremely seldom that a grand jury will initiate any prosecution not presented to it by the prosecutor. For this reason, it has been asserted by those favoring the alternative use of the indictment or information in felony prosecutions that the retention of the grand jury in such cases is an unjustifiable expense, that it results in needless delay that is detrimental to the innocent accused but welcomed by the guilty, and that it amounts to a useless duplication of the usual preliminary hearing.[27]

The advantages secured by the alternative method of indictment or information are several. The use of the information in criminal prosecutions serves to place more squarely upon the prosecuting attorney the responsibility for the just disposition of the case—a responsibility which under the obligatory grand jury system is

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[25] From recent correspondence with the various state supreme courts and attorneys-general, it appears that the following states now permit the prosecution of indictable offenses by informations (several states require indictments in the prosecution of capital offenses, or where the punishment is imprisonment for more than ten years, or for other specified crimes of the grade of felony): Arizona, Arkansas,* California, Colorado, Connecticut, Florida, Idaho, Indiana,* Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York,* North Dakota, Oklahoma, South Dakota, Utah, Vermont, and Washington. (* States that have adopted the information system since the report of the American Law Institute in its CODE OF CRIMINAL PROCEDURE (1930) 40.)

The following ten states require felonies to be prosecuted upon indictment, but permit the defendant to waive such indictment so that the information may be substituted: Delaware, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island, and Virginia.

[26] See Dession, *From Indictment To Information—Implications of the Shift* (1932) 42 YALE L. J. 163, in which the author defends the retention of the grand-jury system although acknowledging a marked shift from the use of the indictment to the information.

[27] Professor Raymond Moley has perhaps been the leading advocate of prosecution by information in this country and has written extensively on the subject. In his articles *The Initiation of Criminal Prosecutions By Indictment Or Information* (1931) 29 MICH. L. REV. 403, and *The Use of the Information in Criminal Cases* (1931) 17 A. B. A. J. 292, Professor Moley points out at length the deficiencies of the grand-jury indictment as compared with the more flexible information.

shared with the grand jury.[28] Moreover, the information may unquestionably be used to effect a considerable saving of time.[29] It dispenses with the necessity for holding the indigent prisoner in jail for months awaiting a regular call of the grand jury. For the innocent accused, the information system affords a prompt trial and the discharge of any suspicion. For those who plead guilty, it affords the opportunity of an immediate commencement of punishment with a subsequent earlier release. It further denies to the guilty defendant who is able to make bond the opportunity to "contact" or "spirit away" the key witnesses.

The argument frequently advanced against the use of the information that it places too much responsibility upon the prosecuting attorney seems to overlook the fact that the actual filing of the information by the prosecuting attorney is merely ministerial in nature.[30] It is generally not the prosecuting attorney but the magistrate at the preliminary examination of the witnesses who determines the necessity for its filing.[31]

It is not questioned that in the past the reputations of many citizens have been protected by the secrecy of the grand jury hearings. However, under the present practice there are relatively few cases in which the accused has not had an open preliminary hearing at which he has been committed or released on bail.[32] All too frequently, newspaper accounts of the grand jury proceedings indicate

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[28] See Miller, *Informations Or Indictments In Felony Cases* (1924) 8 MINN. L. REV. 379, 396.

[29] *Id.* at 382. For a further discussion of the arguments for and against the information, see Note (1922) 6 MINN. L. REV. 615.

[30] See *Report of the Committee on Criminal Law and Procedure* (1934) 53 PROC. TEX. BAR ASSO. 160, 172.

[31] In many jurisdictions permitting felony prosecutions by the use of informations, there is provision for preliminary examination of witnesses by a magistrate who determines whether or not there is probable cause for believing the accused is guilty of the offense charged. Where such probable cause is found to exist, the prosecutor files an information in the trial court having jurisdiction of felony cases. See (1939) 23 J. AM. JUD. SOC. 25.

[32] *Ibid.*

that the cloak of secrecy which is presumed to surround the grand jury investigation, is somewhat less protective than has been vehemently asserted.

Opponents of the abolition of the compulsory system of indictment by the grand jury contend that it is desirable because of the "independent" nature of the grand jury investigation.[33] Impartial surveys, however, indicate that only in rare instances do grand juries initiate proceedings not formerly presented by the prosecuting attorney.[34] This is necessarily so, since the grand jury is not empowered to employ private investigators to secure information.[35] The use of the grand jury several hundred years ago as an independent body to initiate prosecutions was undoubtedly sound. Perhaps the grand jury is still of value as an independent investigating body in some communities where crime is so occasional that a breach of the peace is observed by most of the citizens. But no twelve city-dwellers can be found who are able to add materially to the investigation conducted by a large urban police force.[36]

However, it is not intended to be asserted that the grand jury in Texas no longer serves an important function. The mere existence of the grand jury as a symbol has a salutary effect upon the public and law-enforcement officers alike.[37] It is of particular importance as a means of forcing the prosecution of corrupt political "bosses" who occasionally control the public prosecutor. It is interesting to

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[33] See note 26 *supra.*

[34] See note 27 *supra.*

[35] For members of a grand jury to employ a private investigator to further their efforts in securing evidence against the defendant has been sufficient cause for reversal of the trial court's failure to quash the indictment since it is not within the scope of the inquisitorial power of the grand jury to employ and finance private detectives to collect evidence, and therefore the jurors were disqualified. People v. Kempley, 265 Pac. 310 (Cal. App. 1928), (1928) 12 MINN. L. REV. 761.

[36] See Miller, *Informations Or Indictments In Felony Cases* (1924) 8 MINN. L. REV. 379, 395.

[37] *Id.* at 407.

note, however, that in those jurisdictions providing for the alternative method of proceeding in felony cases, the grand jury has practically disappeared.[38] The frequency with which the grand jury should be called, under such a view of its function, would properly be within the trial court's discretion. But if the very real advantages of limited use of the grand jury are to be preserved, a statutory provision requiring that the grand jury be convened at least once a year would seem to be necessary.

Proposals seeking to amend Article I, Section 10, of the Texas Constitution, frequently urged by members of the Bar, have repeatedly met with disfavor,[39] although it is well established that the procedure proposed to be substituted violates no right guaranteed by the Federal Constitution.[40] Other methods of reducing the delay encountered in the present indictment system have been proposed from time to time by Texas Bar Committees, *e. g.*, the maintaining of continuous terms for grand juries and the abolition of continuances. Although the adoption of such proposals would undoubtedly speed up the trial of felony prosecutions in districts where the grand jury is now called infrequently, it would not serve to reduce substantially the present objections of expense, lack of efficiency, and division of responsibility between the grand jury and the prosecutor.

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[38] See Dession, *From Indictment To Information — Implications of the Shift* (1932) 42 YALE L. J. 163, 190.

[39] See *Report of the Committee On Criminal Law and Procedure* (1934) 53 PROC. TEX. BAR ASSO. 160; *Report of the Committee On Criminal Procedure of the District Judge's Asso.* (1925) 3 TEX. L. REV. 166.

Because of the general disfavor accorded such recommendations for reform, various members of the Bar have offered the alternative, but less progressive, recommendation of continuous or successive grand-jury terms in an effort to reduce the delay incurred in small counties occasioned by the present inadequate system. See *Report of the Committee On Criminal Law and Procedure* (1941) 61 PROC. TEX. BAR ASSO. 32; *Report of Committee On Remedial Procedure* (1939) 58 PROC. TEX. BAR ASSO. 122.

[40] United States v. Gill, 55 F. (2d) 399 (D. N. M. 1931).

The new Federal Rules of Criminal Procedure[41] provide that non-capital felony offenses may be prosecuted by information if, after having been advised of the nature of the charges against him and of his rights in the matter, the accused agrees in open court to waive prosecution by indictment.[42] This procedure, whether the accused is ready to plead guilty and commence serving his sentence promptly or is anxious to have his innocence quickly demonstrated, saves the cumbersome and frequent delay occasioned by the necessity of grand jury action. Any doubts that may have existed concerning the constitutionality of such a provision were resolved by the decision in *United States v. Gill.*[43]

It seems clear that a similar provision for the waiver of indictment by a grand jury in non-capital felony offenses would not violate Article I, Section 10, of the Texas Constitution.[43a] In the *Gill* case, the Court declared that the indictment was not essential to confer jurisdiction on the court, but was merely a right of the accused which he could waive.[44] This procedure has been upheld

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[41] For a few of the leading articles discussing the NEW FEDERAL RULES OF CRIMINAL PROCEDURE, see Vanderbilt, *New Rules of Federal Criminal Procedure* (1943) 29 A. B. A. J. 376 (also condensed in 6 TEX. BAR J. 300); Holtzoff, *The New Federal Criminal Procedure* (1946) 37 J. CRIM. L. 111; Waite, *The Proposed Federal Rules of Criminal Procedure* (1943) 27 J. AM. JUD. SOC. 101; Robinson, *The Proposed Federal Rules of Criminal Procedure* (1943) 27 J. AM. JUD. SOC. 38; Hall, *Objectives of Federal Criminal Procedural Revision* (1942) 51 YALE L. J. 723; Orfield, *The Preliminary Draft of the Federal Rules of Criminal Procedure* (1943) 22 TEX. L. REV. 37.

[42] FED. RULES CRIM. PROC. (1946) Rule 7(b).

[43] 55 F. (2d) 399 (D. N. M. 1931). In this case the court, speaking through Circuit Judge Phillips stated, at 403, "We are unable to find in the decisions any convincing ground for holding that a waiver is effective in misdemeanor cases, but not effective in the case of felonies."

[43a] TEX. CODE CRIM. PROC. (1925) art. 11, as amended by Acts 1931, 42d Leg., p. 65, c. 43, § 2, provides: "The defendant in a criminal prosecution for any offense, may waive any right secured him by law except the right of a trial by jury in a felony case when he enters a plea of not guilty." Moreover, the Texas Court of Criminal Appeals has declared that "one accused of a criminal offense may waive any constitutional and statutory right except that of trial by jury in a capital case." Simpson v. State, 141 Tex. Crim. Rep. 324, 148 S. W. (2d) 852 (1941).

[44] It has also been held that other constitutional rights may be waived by the defendant; see, *e. g.*, Johnson v. Zerbst, 304 U. S. 458, 465 (1938) (right of counsel); United States v. Murdock, 284 U. S. 141 (1931) (privilege against self-incrimination); Patton v. United States, 281 U. S. 276 (1930) (trial by jury).

in other states having similar constitutional prohibitions.[45]

The adoption of a code provision or rule of procedure permitting such waiver in non-capital felony cases would expedite greatly the trial of numerous cases that would ordinarily be delayed pending the calling or action of a grand jury. Moreover, such a provision could be expected to reduce materially the expense in time and salaries of all persons involved. Finally, there would be considerably less difficulty in obtaining the presence of key witnesses at the trial, were it known that such trial would be held at once.

The provision of the Federal Criminal Rules seems to have some advantage over the provision adopted by the American Law Institute, whereunder the prosecutor is free to determine whether indictment or information is to be employed.[46] The former provision is not subject to the objection which may be offered against the latter, that the rights of the accused have been violated.[47] Moreover, the chief objection urged against the alternative method of proceeding as proposed by the American Law Institute, that too much discretion is conferred upon the prosecuting attorney, would likewise be inapplicable to the Federal Rule. The discretion as to the manner of proceeding under the federal practice whereby the accused may waive the indictment, is vested in the accused. And as a further precaution, the Federal Rule requires that the waiver be made in open court, and only after the accused has had the advice of counsel and has been informed of his rights.[48]

If a provision comparable to that of Federal Rule 7(b) were adopted, the grand jury system itself would be preserved intact.

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[45]Michigan has a still different procedure that avoids the necessity of a grand jury to return indictments. A single district judge is invested with all of the inquisitorial powers of a grand jury and his findings are given the effect of an ordinary indictment. See Winters, *The Michigan One-Man Grand Jury* (1945) 28 J. AM. JUD. SOC. 137.

[46] AMERICAN LAW INSTITUTE, CODE OF CRIMINAL PROCEDURE (1930) § 113 provides that "All offenses heretofore required to be prosecuted by indictment may be prosecuted either by indictment or by information."

[47] See Mitchell, *Reform In Federal Criminal Procedure* (1932)) 18 A. B. A. J. 732; Robinson, *The Proposed Federal Rules of Criminal Procedure* (1943) 27 J. AM. JUD. SOC. 38.

[48] FED. RULES CRIM. PROC. (1946) Rule 7(a), (b).

Moreover, the decrease in the number of cases scheduled to be brought before the grand jury would reduce the length of its term and render service thereon less objectionable to the average citizen. Furthermore, there is a substantial likelihood that the number of reversals based upon technical defects in indictments would be materially reduced. In cases in which the accused waives indictment and prosecution proceeds by the more flexible information, amendments to the information could be made without the necessity of recalling the grand jury to return a new indictment.

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