

passive jury may become the mere conduct pipes for giving expression to the convictions of the Crown counsel, without any responsibility attaching to him. His advice may be good, but in finding a bill or no bill on the evidence before them the jury are alone seen and responsible. The Crown counsel has certainly opportunity, as I have said, for presenting his views, for which, from the secret character of the tribunal, he is in no way amenable.

Then the Grand Jury is a changing body—those from time to time composing it being men not accustomed to the examination of witnesses or the investigation of facts. How easy for a partial or unwilling witness, or one who has become interested in averting a trial or conniving with the accused or his friend, to suppress or color his statements in the secret examination before the Grand Jury. There is no adequate check upon such a one. Again, it is quite possible that the Grand Jury or the necessary majority may be prejudiced or moved by mistaken pity, and so refuse to put a person on trial; and even when their action is warranted they are not in a position to justify their finding. The interposition of a Grand Jury does not shorten the imprisonment of a person committed for trial, even if a bill be ignored, but the necessity for it may cause his detention for five or six months, in some cases, unless he claims, as he can in Ontario in most criminal cases, the right to be tried by a judge without a jury.

Another weighty objection to the Grand Jury is this: there is no challenge, such as there is to the petit jury. Persons related to or closely connected with the prosecutor or the accused may be on the Grand Jury—personally or politically connected, as friend or antagonist—or persons who have a strong personal or pecuniary interest in the matter to be dealt with, or men who hold and have expressed strong opinions on the case. Such persons, every one will say, ought not to be on the Grand Jury in the particular case. But how is it effectually to be guarded against, the safeguard of full right to challenge wanting? Nor is it a sufficient answer to say the verdict of a petit jury must be unanimous, the finding of a Grand Jury is by the majority, but who can calculate upon the influence that may be exerted in a

secret tribunal by one or two of its members, moved by prejudice or influenced by unworthy and evil motives—nor is such a thing improbable of occurrence. To my mind this is a grave objection.

Then there is the possibility of mistakes without corrupt motive—mistakes that may lead to very serious consequences. I do not press this objection not being an evil inherent in the system; all the same, gross mistakes have been made, to my certain knowledge. A good many years ago, before the appointment of Crown Attorneys, the foreman of the Grand Jury brought in several bills into court, and one of the prisoners was about to be arraigned when, by the merest accident, it was discovered that only eleven of the Grand Jury heard the evidence, the others having left the Grand Jury room for some purpose. In another case the jury heard a near relative of the accused, an intended witness for the defence, whose name happened to be the same as that of the chief Crown witness, who happened to be out of court when the name was called, and the other entered the Grand Jury room and gave evidence that induced the Grand Jury to ignore the bill.

An eminent Crown counsel, now on the Bench, mentioned recently to me a matter that occurred in his own practice. He had witnesses to prove the distinct admission by the accused of his guilt. The Crown officer sent them before the Grand Jury, who heard the evidence; but, singular to say, ignored the bill. The explanation of the Grand Jury did not speak much for their intelligence. It was this. "Why, we had no evidence against the prisoner but what he said himself." One would have thought such evidence sufficient to satisfy an ordinary mind, but not so with this jury.

Even in the city of London, where it is supposed the most intelligent grand juries in England are summoned, the same has occurred. I recollect several cases of the kind recorded in the *Law Times*. One was the case of a foreman by mistake endorsing "a true bill," whereas the Jury had actually ignored it. The prisoner was tried and found guilty, though the judge charged in his favor. The mistake was discovered and pointed out, but there was no remedy—everything was regular on its face, and the intention could not be per-