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GOING ROGUE: INDEPENDENT GRAND JURIES THROUGHOUT AMERICA

By Nino C. Monea*

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ABSTRACT

Grand juries today do little more than passively approve (almost never disapprove) indictments proposed by prosecutors. But this stands in stark contrast to grand juries in the past. They investigated cases themselves and their purview went well beyond criminal matters. This Article looks in-depth at three historical cases where grand juries not only conducted major investigations but took on major additional roles. They ousted corrupt public officials, ran their cities in the interim, or booted prosecutors that failed to do their jobs. These examples demonstrate that grand juries in modern society could have a more robust role in the justice system.

INTRODUCTION

It is an accepted fact that prosecutors control grand juries. For decades, the institution has been called a “rubber stamp,” “fifth wheel,” “tool of the executive,” “total captive of the prosecutor,” “prosecution lapdog,” and an “ignominious prosecutorial puppet.”¹ Though it remains in the Bill of the Rights, it provides no meaningful check on the government.

But in another era, grand juries were entirely different animals. Due to the lack of public prosecutors and police, grand juries were gatekeepers of prosecutorial discretion at the nation’s founding.² For a century afterward, grand juries maintained their influence.

Newspapers would run the names of grand and trial jurors³—because they were important government officials. Grand jury foremen were profiled like candidates for office and had their likenesses splashed across the pages.⁴ Former grand jury foremen would be identified as such,⁵ much the way that former officeholders are identified today. Blow-by-blow accounts of grand jury selections could once be found in dailies.⁶ Preachers led prayers for the work of the grand jury in their community.⁷ And every move of the body would shoot fear into the hearts of corrupt government officials and petty criminals.⁸

¹ Niki Kuckes, *The Useful, Dangerous Fiction of Grand Jury Independence*, 41 AM. CRIM. L. REV. 1, 8 (2004).

² Roger A. Fairfax, Jr., *Grand Jury Innovation: Toward a Functional Makeover of the Ancient Bulwark of Liberty*, 19 WM. & MARY BILL OF RTS. J. 339, 344-45 (2010).

³ E.g., *Grand and Petit Jurors*, NEW ULM REV., at 4, (May 7, 1902), <https://www.newspapers.com/image/81039989/> [<https://perma.cc/8WY6-UWJ7>].

⁴ George A. Van Smith, *Foreman Oliver Promises to Protect Witnesses Who Give Jury Proof of Grafters’ Doings*, S.F. CALL, at 41, (Nov. 11, 1906), <https://www.newspapers.com/image/80980981/> [<https://perma.cc/3D79-2DQU>].

⁵ *Municipal Ownership Opposed by Andrews*, S.F. CALL, at 2, (May 21, 1906), <https://www.newspapers.com/image/80948887/> [<https://perma.cc/3BR6-5G5Z>].

⁶ *Ruef’s Lawyers Fight to Retain Delay on Grand Jury*, S.F. CALL, at 3, (Nov. 1, 1906), <https://www.newspapers.com/image/80980325/> [<https://perma.cc/SVZ9-4TZP>].

⁷ *Much to Be Thankful for in San Francisco*, S.F. CHRONICLE, at 7, (Nov. 30, 1906), <https://www.newspapers.com/image/27379829/> [<https://perma.cc/SVZ9-4TZP>].

⁸ E.g., *Is Still at Work*, MINNEAPOLIS J., at 6, (May 13, 1901), <https://www.newspapers.com/image/76275488/> [<https://perma.cc/JL8M-QQJ9>]; *Labors Bear Fruit*, MINNEAPOLIS J., at 7, (May 15, 1901), <https://www.newspapers.com/image/79596834/> [<https://perma.cc/2J3P-2WNT>]; <https://www.newspapers.com/image/79596834/>; *Gamblers Take Fright* [<https://perma.cc/2J3P-2WNT>]; <https://www.newspapers.com/image/79596834/>; *Gamblers Take Fright*

Grand juries once took on many responsibilities beyond issuing criminal indictments. For example, they audited the tax collector's books and accounts, investigated the sufficiency of bonds for county officers, and set local tax rates.⁹ Sometimes their reports could get specific: one laid out the location of restrooms in a courthouse and demanded that the sheriff's house be repainted.¹⁰ Other times, they could get *very* specific. A Nevada grand jury audit decried a \$2.25 fee it considered wasteful in a city budget of \$30,000.¹¹

Do right by the grand jury, and one could be rewarded. One panel endorsed a judge for reelection, passing a resolution "expressing their confidence in his legal ability and integrity, with the hope that he may be chosen without opposition."¹² Another praised the fire department and said the local poor house was "all that could be desired."¹³

Woe be unto any person or office that displeased the grand jury, for they were unsparing in their wrath. After inspecting a jail, one thundered in its report that the jail had "inadequate and defective plumbing, rooms entirely unfit for occupancy; filthiness in the extreme, owing to defective construction, and in the opinion of this body make the place entirely unfitted for its purpose on sanitary and hygienic principles."¹⁴ Declaring wine rooms a menace to society, a grand jury issued a report saying they were "productive of evil that is of the vilest kind," and proposed their abolition.¹⁵

Swashbuckling reports like this one were outside the purview of the grand jury according to the legal elite. The Massachusetts Attorney General wrote that the practice of grand juries issuing "presentments [that] are denominated public grievances, relative to the political or moral state of the country, is altogether extra-official."¹⁶ The Iowa Supreme Court concurred, holding that "[i]f the misconduct of an officer does not amount to a crime, and is not of such magnitude as will justify the jury in finding an indictment, [the grand jury's] powers over the offense complained of, are at an end."¹⁷ Plenty of other courts joined the chorus that grand jury reports were illegal.¹⁸ Grand juries did not care.

and the Lid Is Dropped, S.F. CHRONICLE, at 3, (Jan. 5, 1906),

<https://www.newspapers.com/image/27434724/> [<https://perma.cc/WCQ4-74AD>].

⁹ George J. Edwards, Jr., *The Grand Jury* (1906).

¹⁰ *Report of Grand Jury*, MOWER COUNTY TRANSCRIPT, at 3, (Apr. 10, 1901),

<https://www.newspapers.com/image/171380629/> [<https://perma.cc/9DQT-KKFQ>].

¹¹ *Grand Jury Report of the January Term of the Second Judicial District Court*, K, RENO GAZETTE J., at 2-3, (Feb. 6, 1878), at 2-3, <https://www.newspapers.com/image/147502385> [<https://perma.cc/9DQT-KKFQ>].

¹² *Untitled*, NEW ULM REV., at 4, (July 4, 1900), <https://www.newspapers.com/image/80064630/> [<https://perma.cc/2ASJ-KM65>].

¹³ *Wine Rooms a Menace*, ST. PAUL GLOBE, at 9, (Feb. 1, 1901),

<https://www.newspapers.com/image/84102031/> [<https://perma.cc/K2N4-58JY>].

¹⁴ *Grand Jury Suggests*, STAR TR., at 9, (Mar. 2, 1901),

<https://www.newspapers.com/image/181064984/> [<https://perma.cc/5ERW-TSKZ>].

¹⁵ *Wine Rooms a Menace*, *supra* note 13.

¹⁶ EDWARDS, *supra* note 9, at 158 (quoting DANIEL DAVIS, PRECEDENTS OF INDICTMENTS TO WHICH IS PREFIXED A CONSISE TREATISE UPON THE OFFICE AND DUTY OF GRAND JURORS, 11 (1831).

¹⁷ *Rector v. Smith*, 11 Iowa 302, 307 (Iowa 1860).

¹⁸ *Id.*; *State ex rel. De Armas v. Platt*, 192 So. 659, 669 (La. 1939); *Bennett v. Kalamazoo Circuit Judge*, 150 N.W. 141, 144 (Mich. 1914); *see also In re Report of Grand Jury*, 137 A. 370, 376 (Md. 1927).

In the same vein, scholars came to mistrust the ability of ordinary people to resolve complex cases. They worried that the “issues in [antitrust or securities litigation] cases may be so complicated that the jury may lack the ability to comprehend, remember or evaluate the evidence.”¹⁹ Grand juries have been proving these assumptions wrong for eons. In 1905, for example, a Chicago grand jury of farmers and small businessmen spent three months untangling complicated agreements between railroads and large meat packers. They examined 185 witnesses, subpoenaed records, and indicted various officials for anticompetitive practices.²⁰

In the end, the pessimists won out. They decided that only lawyers could be trusted to handle investigations. Inconveniently for opponents of the grand jury, the Constitution required that grand juries remain. But the Federal Rules of Criminal Procedure worked around this, stating that all indictments “must be signed by an attorney for the government.”²¹ And so, grand juries were slowly sapped of any meaningful role, and grand jurors resigned themselves to a passive role.

This Article takes an in-depth look at three historical examples of grand juries in their prime. Each time, they tackled a sensational public corruption scandal. Not only did they unpeel a complex networks of graft, but they also went far beyond what we expect grand juries to do today. They conducted independent investigations, made public policy decisions, booted incompetent prosecutors, negotiated with private companies, and ran their cities in the absence of a legitimate government. Though prosecutors aided the work of these grand juries, they served as equals, not masters.

This Article proceeds in four Parts. Part I looks at Minneapolis, Minnesota and the grand jury investigation of 1901 against Mayor Albert A. Ames. During his final term in office, after a long career in public service, Ames transformed the city government into a massive graft machine. He allowed criminals to buy their way out of virtually any infraction. The grand jury drove him out of office, installed a reform mayor, and shepherded the city through the transition period.

Part II examines San Francisco, California in the same era. Mayor Eugene Schmitz and crime boss Abe Ruef controlled every arm of local government and used that power to wring as much money out of it as possible. After one abortive grand jury investigation, a second grand jury indicted virtually the entire city leadership and ran the city for a time.

Part III explores a multi-year grand jury investigation into racketeering beginning in 1935. The first prosecutor—a Tammany man—dithered, and the grand jury demanded his removal. When he refused, the grand jury started investigating without him and appealed to the governor to appoint a special prosecutor to aid them. When the governor obliged, the panel worked with the new prosecutor to smash one criminal racket after another.

In telling the tales of these grand juries, the Article endeavors to place the grand jury and grand jurors in the front and center of the narrative. Usually, accounts of

¹⁹ Maralynne Flehner, *Jury Trials in Complex Litigation*, 53 ST. JOHNS L. REV. 751, 752 (1979).

²⁰ RICHARD D. YOUNGER, *THE PEOPLE'S PANEL: THE GRAND JURY IN THE UNITED STATES* 220–21 (1963).

²¹ Fed. R. Crim. P. 7(c)(1).

these investigations portray the lead prosecutor as the star of the show—understandably, as many prosecutors were forceful personalities and it is easier to focus on one heroic individual rather than a full team. But this stylistic bias obscures grand juries’ essential roles in the investigations and in managing the city when officials were removed.

MINNEAPOLIS, MINNESOTA

The first settlers of the Minneapolis area were Dakota tribes around the time of the 16th century.²² Though largely gone now, their influence survives in the city’s name. “Minneapolis” is derived from a “mini,” a Dakota word for water, with “polis,” the Greek word for city.²³

Despite being farther north than Boston, Minneapolis was sizzling in 1900. Since it was incorporated, it had seen precipitous growth. It rocketed from 2564 people in 1860 to over 200,000 by the turn of the century.²⁴ The city posted double-digit population growth figures three decades in a row.²⁵ Much of the growth was due to immigrants from Finland, Sweden, Norway, and Denmark.²⁶ So many, in fact, that at the dawn of the twentieth century, it was the second largest “Scandinavian city” in the world.²⁷ Opportunities abounded. Thanks to the riverfront industrial district, jobs were plentiful and the city was the flour-milling capital of the world.²⁸

Along with neighboring St. Paul, Minneapolis is one of the Twin Cities bisected by the Mississippi River. At the turn of the twentieth century, however, the City of Lakes was beset by twins of a different sort: the Ames brothers.

The Ames family came to the Midwest before Minneapolis was founded.²⁹ Father Alfred Elisha Ames was the first civilian doctor in the area.³⁰ An accomplished man, he served in the Illinois state senate, the Minnesota constitutional convention, and he was a founder of the University of Minnesota.³¹ He also had two sons of note: Albert Alonzo Ames and Fred W. Ames. These apples, sadly, fell wide of the tree.

²² *Minneapolis, Minnesota Population 2019*, WORLD POPULATION REV.

<http://worldpopulationreview.com/us-cities/minneapolis-population> [https://perma.cc/C7R6-FWGM] (last visited Feb. 14, 2019).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Lincoln Steffens, *The Shame of Minneapolis: The Rescue and Redemption of a City that was Sold Out*, MCCCLURE’S MAGAZINE, Jan. 1903.

²⁸ IRIC NATHANSON, MINNEAPOLIS IN THE TWENTIETH CENTURY: THE GROWTH OF AN AMERICAN CITY, Introduction 3-11 (2010).

²⁹ Steffens, *supra* note 252527, at 229.

³⁰ Tamatha Perlman, *Ames, Albert Alonzo “Doc” (1842–1911)*, MNOPEdia (November 15, 2019), <http://www.mnopedia.org/person/ames-albert-alonzo-doc-1842-1911> [https://perma.cc/VZZ2-VSBX].

³¹ *Alfred Elisha Ames*, MYHERITAGE (last visited Dec. 1, 2018), <https://www.myheritage.com/research/record-1-531448301-1-501931/alfred-elisha-ames-in-myheritage-family-trees?s=572432171> (last visited Dec. 1, 2018) [https://perma.cc/7LU5-Y4RD].

Fred, the youngest son, dabbled in civil engineering before ending up as an assistant cashier at a bank in Minneapolis. When the Spanish-American War broke out, he joined the Thirteenth Minnesota volunteers, rising to the rank of major. By the time he left, he was a colonel. Charged with cowardice by fellow officers, Fred promised that he would leave the Army post haste in exchange for the withdrawal of his formal charges.³²

Albert A. Ames, the other son, was once considered vice presidential material.³³ By the end of his life, he was known only for vice. Young Albert looked like he would have a bright career, and for much of his life, he did. After graduating medical school at 20, he served as a doctor in the U.S. Dakota War of 1862 and the Civil War, reaching the rank of surgeon major by 22. With the war over, he went to Minneapolis and found he was as good at politics as he was medicine. After a stint in the legislature, he ran for mayor in 1876 as a Republican. He lost the nomination for mayor but promptly switched parties to secure the Democratic nomination, winning the general election.³⁴

Once in office, he took a hands-off approach to governing. He was a regular customer at saloons and gambling halls and was known to “freely imbibe.”³⁵ Every time he was up for reelection, he lost. But every time he lost, he bounced back and won a subsequent election.³⁶ Critics would call him a “self-seeker” with few “ideas of municipal government beyond providing jobs for his friends.”³⁷ Even critics, though, had to admit he “possessed an inexplicable power over a large number of voters who had believed that he is ‘for the people.’”³⁸

Minneapolis worked itself into a familiar pattern of four years with Ames, four years without. When Ames assumed the mayoralty for the final time in 1901, however, something changed. His final term would be marked by a level of “corruption which for deliberateness, invention, and avarice has never been equalled [sic].”³⁹ The mayor liked to brag that there were only fifty-eight inmates at the city jail near the start of his fourth term.⁴⁰ But the real crooks were on the outside.

Under the new leadership, con men, gambling dens, brothels, saloons, and other unsavory industries flourished while police were reassigned from fighting crime to aiding it. Officers were tasked with collecting bribes from each criminal element in exchange for protection.⁴¹ By this way, the mayor established a “schedule of prices”

³² *Fred Ames' Career*, MINNEAPOLIS J., at 2, (July 10, 1903), <https://www.newspapers.com/image/76298162/> [<https://perma.cc/AAC6-R3CZ>]. <https://www.newspapers.com/image/76298162/>.

³³ *Mayor Is Indicted*, WILLISTON GRAPHIC, at 1, (June 19, 1902), <https://www.newspapers.com/image/143793631/> [<https://perma.cc/B7Q4-4V7Q>].

³⁴ Perlman, *supra* note 30.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Joyful News*, MINNEAPOLIS J., at 4, (May 23, 1902), <https://www.newspapers.com/image/76282320/> [<https://perma.cc/PZ6Y-5VDA>].

³⁸ *Id.*

³⁹ Steffens, *supra* note 527, at 230–31.

⁴⁰ *Attendance Is Light*, MINNEAPOLIS J. at 7, (May 15, 1901), <https://www.newspapers.com/image/79596834/> [<https://perma.cc/XHX3-VFBR>].

⁴¹ Steffens, *supra* note 527, at 231.

for breaking the law.⁴² Favored establishments could violate the law with impunity.⁴³ To facilitate this, half of all policemen in the city were fired—the honest ones.⁴⁴ The remaining scoundrels were placed under the command of the Mayor’s brother Fred, who Albert named police superintendent.⁴⁵

The best example of the corrupt bargain was the “big mitt” scheme. It required the cooperation of several moving parts. Con men would first sucker a passerby into a poker game, deal them a seemingly winning hand (called a “big mitt”), and guarantee another player—who was in on the scam—an even better hand. A police officer was paid to break up a game after the fool had been separated from his money. If the loser complained he had been cheated, the officer threatened to arrest him for unauthorized gambling.⁴⁶

There are plenty of other examples. Prostitutes were forced to purchase illustrated biographies of city officials.⁴⁷ Unregulated saloons, gambling parlors, and houses of ill fame proliferated without risk of enforcement.⁴⁸ Nickel slots were carted into all sorts of businesses to tempt passersby. Slot machine manufacturers and operators “assumed that under the Ames regime that kind of business could be carried on without much regard for the law[.]”⁴⁹ So bold were the criminals that they did not even bother to hide the devices—they stood in plain view.⁵⁰ Machines could be found in not only saloons but also cigar and drug stores. In some cases, they were installed against the wishes of the proprietors. The poor and the young flocked to them.⁵¹

In some ways, these one-off machines were worse than established casinos, since they were easily accessible to any child in a drug store. A paper warned that they would inflict “incalculable damages” because they gave boys “their first lessons in the vice” and would cause them to lose their jobs and reputations.⁵²

How exactly Mayor Ames went from an eclectic old man to a buccaneering mastermind is something of a mystery. One friend ventured that Ames was under the influence of morphine.⁵³ His lawyers would argue that he was an invalid who had been taken advantage of by criminals.⁵⁴ No matter the cause of the plague upon the

⁴² YOUNGER, *supra* note 20, at 196.

⁴³ *Minneapolis Officials Guilty of Corruption*, PERU WKLY. DERRICK, at 1, (July 19, 1902), <https://www.newspapers.com/image/419477430/> [<https://perma.cc/HMV3-AEKP>].

⁴⁴ Steffens, *supra* note 527, at 231.

⁴⁵ LARRY MILLETT, *ONCE THERE WERE CASTLES: LOST MANSIONS AND ESTATES OF THE TWIN CITIES* 172 (2011).

⁴⁶ Lauren Peck, *A Career of Corruption*, MINN. GOOD AGE, (Apr. 25, 2018), <http://www.mngoodage.com/voices/mn-history/2018/04/a-career-of-corruption/> [<https://perma.cc/26Z3-GBQ8>].

⁴⁷ MILLETT, *supra* note 43, at 172.

⁴⁸ *A Wholesome Scare*, MINNEAPOLIS J., at 4, (Apr. 1, 1091), <https://www.newspapers.com/image/76274302/> [<https://perma.cc/CMV9-X2JV>].

⁴⁹ *Id.*

⁵⁰ *Game Wasn’t Flushed*, MINNEAPOLIS J., at 8, (Apr. 3, 1901), <https://www.newspapers.com/image/76274359/> [<https://perma.cc/YWL9-66JT>].

⁵¹ *A Wholesome Scare*, *supra* note 46, at 4.

⁵² *Id.*

⁵³ *Mayor Is Indicted*, WILLISTON GRAPHIC, at 1, (June 19, 1902), <https://www.newspapers.com/image/143793631/> [<https://perma.cc/C65W-8WYH>].

⁵⁴ Peck, *supra* note 44.

city, it would take a grand jury to cure it.

The First Grand Jury Investigation: April 1901 – July 1901

The first grand jury to take a crack at the system was summoned on April 1, 1901. Though it was April Fool's Day, the convening judge was not one for jokes. Judge McGee sternly told them that it cost about \$100 a day to operate a grand jury, and he expected them to earn every penny. There would be no lollygagging on this panel: jurors would have regular hours of 10:00AM to 5:00PM, unlike past juries that simply showed up whenever they pleased. He warned against trying to stretch out the assignment with frivolous tasks to avoid doing real work. Absenteeism would not be tolerated; anyone missing would be fined.⁵⁵

In that era, grand juries commanded respect. Even legislators were fearful of the wrath of grand juries. They would time the introduction of unpopular bills to avoid coinciding with grand jury sessions, for they were afraid the grand jury would scrutinize them and arouse public interest against them.⁵⁶

Petty criminals feared them, too. When the slot jockeys heard that a grand jury had been empaneled to investigate them, it sent a chill through their spines. No sooner had Judge McGee sworn in the jurors than saloonkeepers hurried to rid themselves of their slot machines—many of them working over the weekend to make sure they were gone.⁵⁷

Police, too, were given a jolt. Hennepin County Sheriff Phil Megaarden admitted that “the [municipal] police force had tacitly allowed the machines to run” and did not want to step on the local police's toes.⁵⁸ However, once the grand jury started sniffing around, the county deputy hopped to action and started a “rapid cleaning out” of the slot machines.⁵⁹ They also started looking for evidence of violations of gambling laws.⁶⁰ Two days after the grand jury's convocation, a paper remarked: “the occasion for a grand jury investigation no longer exists.”⁶¹

After the deputies finished raiding gambling joints, the grand jury questioned them.⁶² It became known that the grand jury would pay special interest to these slot machines.⁶³ Local police were interviewed too. From here came the first threads of evidence of public corruption. One officer claimed that Mayor Ames was trying to

⁵⁵ *Grand Jury Given Limits*, STAR TRIB., at 8, (Apr. 2, 1901), <https://www.newspapers.com/image/181009351/> [<https://perma.cc/97K8-MD6Q>].

⁵⁶ *An Essentially Bad Measure*, ST. PAUL GLOBE, at 4, (Apr. 3, 1901), <https://www.newspapers.com/image/84105929/> [<https://perma.cc/KL5H-5E9Q>].

⁵⁷ *Slot Machines Out*, MINNEAPOLIS J., at 6, (Apr. 2, 1901), <https://www.newspapers.com/image/76274324/> [<https://perma.cc/43C3-DTDA>]. <https://www.newspapers.com/image/76274324/>.

⁵⁸ *Game Wasn't Flushed*, Minneapolis J., at 8, (Apr. 3, 1901) <https://www.newspapers.com/image/76274359/> [<https://perma.cc/8KGY-NMUF>].

⁵⁹ *A Wholesome Scare*, *supra* note 46, at 4.

⁶⁰ *Slot Machines Out*, *supra* note 55, at 6.

⁶¹ *Flushed the Game*, MINNEAPOLIS J., at 7, (Apr. 3, 1901), <https://www.newspapers.com/image/76274357/> [<https://perma.cc/6WJZ-7WPP>].

⁶² *The Grand Jury*, MINNEAPOLIS J., at 7, (Apr. 8, 1901), <https://www.newspapers.com/image/64199973/> [<https://perma.cc/5TXF-G628>].

⁶³ *The Columbia Theater*, MINNEAPOLIS J., at 9, (Apr. 9, 1901), <https://www.newspapers.com/image/76274512/> [<https://perma.cc/T7UE-XGB3>].

set up a political machine modeled after Tammany Hall in New York. Police were expected to pay twenty dollars per month into the machine in order to keep his job.⁶⁴ Another officer explained how he was forbidden to make arrests. It got so bad, he said, that the con men would “pass by and wink at me, chuck me under the chin and laugh at me. I was helpless and they knew it.”⁶⁵

Criminals lent a hand to the investigation as well. The small-time slot jockeys believed that established casinos—in other words, business rivals—had tipped off police.⁶⁶ So, they repaid the favor by tipping off police about gambling dens to raid.⁶⁷ County deputies got several warrants and seized thousands of dollars of paraphernalia as a result.⁶⁸ When the casino owners were piled into court, there was “rage in every man’s eye, and curses deep.”⁶⁹

But the grand jury was not content to sit back and let evidence come to them. Unbeknownst to all, the grand jury went on a slumming tour. They split up to avoid attracting suspicion and hit the town to investigate in person. They visited questionable saloons, pubs in the tenderloin district, and illegal wine rooms operating upstairs in buildings.⁷⁰

It was a productive excursion. All in all, the jurors returned 126 indictments.⁷¹ When their court date arrived, ninety-seven saloonkeepers, hotel managers, and cigar store owners filed into Judge McGee’s courtroom for keeping slot machines on their premises. All of them pled guilty.⁷²

These convictions opened up a wealth of information to the grand jury. A half-dozen saloonkeepers testified before the grand jury to talk about their books, adding further details.⁷³ Seeking subject matter experts, the grand jury also called upon journalists on the crime beat to explain how the schemes worked.⁷⁴

Mayor Ames started sweating. To set the bloodhounds off-kilter, he executed “one of the boldest acts in the history of the police administration of Minneapolis.”⁷⁵ Under the Ames regime, prostitution had been allowed to operate under an unwritten arrangement: police would lay off them, but every woman had to report to

⁶⁴ *Untitled*, PRINCETON UNION, at 4, (Apr. 11, 1901), <https://www.newspapers.com/image/86213081/> [<https://perma.cc/RG96-AJDT>].

⁶⁵ “*Chucked Under Chin by the Criminals*,” MINNEAPOLIS J., at 2, (Apr. 30, 1901), <https://www.newspapers.com/image/76275085/> [<https://perma.cc/B9TN-RJAR>].

⁶⁶ “*’Twas a Big Pinch*,” Minneapolis J., at 6, (Apr. 9, 1901) <https://www.newspapers.com/image/76274507/> [<https://perma.cc/272K-VHQL>].

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *The Grand Jury Springs a Sensation*, STAR TRIBUNE, at 9, (Apr. 13, 1901) <https://www.newspapers.com/image/181023848/> [<https://perma.cc/KRF9-5VRK>].

⁷¹ *Id.*

⁷² *Slot Gamblers in Court*, ST. PAUL GLOBE, at 2, (May 2, 1901), <https://www.newspapers.com/image/84107533/> [<https://perma.cc/J76T-32WA>].

⁷³ *Asked Few Questions*, STAR TRIB., at 11, (May 9, 1901), <https://www.newspapers.com/image/181056557/> [<https://perma.cc/RSZ2-BGWT>].

⁷⁴ *Nickel-in-the Slot Machines*, STAR TRIB., at 7, (May 10, 1901), <https://www.newspapers.com/image/181058159/> [<https://perma.cc/2G22-RFJS>].

⁷⁵ *By Mayor’s Order*, MINNEAPOLIS J., at 6, (May 11, 1901), <https://www.newspapers.com/image/76275450/>.

municipal court to pay a fine of \$100 on the 10th of each month.⁷⁶ Thousands had been funneled into city coffers this way.⁷⁷

But this month, Ames ordered the prostitutes to not appear. He reasoned their presence—essentially paying bribes under the nose of the grand jury—would lead to unwanted questions.⁷⁸ Furthermore, he issued an order closing the red-light district for the evening.⁷⁹ Brothel keepers were told to lock their employees in and their customers out.⁸⁰ No explanation was given for these bizarre directions. The party line was simply “it is orders.”⁸¹ The good doctor claimed he knew nothing when asked.⁸²

This masterplan backfired perfectly. The mayor’s antics were derided as “enough to make a horse laugh”⁸³ and his ploy brought the city “to the very verge of governmental chaos.”⁸⁴ It is unlikely that Mayor Ames cared about jeremiads in the paper, however. By this point, he was charged in the press with “open collusion with criminals,” yet said nothing in denial.⁸⁵ Observers predicted that “[t]he grand jury may make whatever report it pleases, the mayor will pay no attention to it.”⁸⁶

Even if Mayor Ames was not paying attention to the grand jury, it was paying attention to him. After the red light district closure, the panel called in brothel keepers of both the licensed and sub-rosa variety and questioned them about whether they had ever been called upon to pay money for protection.⁸⁷ Eventually, Mayor Ames was brought in for questioning.⁸⁸ That same day, he was interviewed by the *Minneapolis Journal* and was asked about his plans to clean up city government. In a flash of honesty, he replied “[i]n fact, I may say that I have no plans.”⁸⁹

Through its labors, the grand jury uncovered all colors of misconduct. Saloons illegally transferred liquor licenses, failed to post, or failed to possess one.⁹⁰ Grocery

⁷⁶ *Id.*; “*Fooling*” the Grand Jury, ST. PAUL GLOBE, at 4, (May 13, 1901), <https://www.newspapers.com/image/84108108/> [<https://perma.cc/PHE7-SBZZ>].

⁷⁷ *By Mayor’s Order*, *supra* note 70.

⁷⁸ “*Fooling*” the Grand Jury, ST. PAUL GLOBE GLOBEST. PAUL GLOBE, at 4, (May 13, 1901), <https://www.newspapers.com/image/84108108/> [<https://perma.cc/AUA6-AYAQ>].

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* Sometime later, Mayor Ames would claim that he was unalterably opposed to fining prostitution at all since they would pass on the costs to customers, who would in turn commit robberies to finance their vice. *See also Position the Same*, MINNEAPOLIS J., at 14, (June 12, 1901), <https://www.newspapers.com/image/79597209/> [<https://perma.cc/F3P8-QZAK>].

⁸³ “*Fooling*” the Grand Jury, *supra* note 707078.

⁸⁴ *Make an End of It*, ST. PAUL GLOBE, at 4, (May 12, 1901), <https://www.newspapers.com/image/84108067/> [<https://perma.cc/4SX9-PTKF>].

⁸⁵ *Id.*

⁸⁶ *Some Cops Must Go*, MINNEAPOLIS J., at 7, (May 21, 1901), <https://www.newspapers.com/image/46455362/> [<https://perma.cc/XUH2-HM9B>].

⁸⁷ *Labors Bear Fruit*, MINNEAPOLIS J., at 7, (May 15, 1901), <https://www.newspapers.com/image/79596834/> [<https://perma.cc/SGP6-624T>].

⁸⁸ *Mayor Interviewed*, MINNEAPOLIS J., at 6, (May 23, 1901), <https://www.newspapers.com/image/79596932/> [<https://perma.cc/FLJ4-EZ5C>].

⁸⁹ *Id.*

⁹⁰ *Too Busy Now*, STAR TRIB., at 7, (May 24, 1901), <https://www.newspapers.com/image/181072772/> [<https://perma.cc/825V-LYVZ>].

stores were allowed to sell liquor without a license.⁹¹ The city license inspector was blasted for “woeful ignorance” and “wholly unfit” for his position.⁹² Fred Coffin, a captain of the mounted police, was indicted and arraigned for soliciting bribes.⁹³ And the city hospital—run by an Ames crony—was cooking its books and grossly mistreating its patients.⁹⁴

As the investigation trudged into July 1901, the county attorney and the court pinned to go on vacation and wanted to avoid more work. Although the grand jury did not want to abandon their mission to purge the city, the decision was made for them. After a few more, largely uneventful, weeks, it closed for good on August 20th.⁹⁵ The numbers tell an impressive tale. It was unprecedented for a grand jury to make it this deep into the summer.⁹⁶ In that time, it summoned around 300 witnesses and returned 319 indictments.⁹⁷ It cost the county \$7000,⁹⁸ but it more than repaid this sum. Six weeks from its commencement, the grand jury had already collected \$8000 in fines for the county. No previous grand jury had exceeded \$4000.⁹⁹

In the process, the inquest won acclaim from the press. Its intrepidity earned it the title of the “greatest grand jury sensation that has ever come to Hennepin county” from the *Star Tribune*.¹⁰⁰ The *Minneapolis Journal* called it “one of the best grand juries the county has ever had.”¹⁰¹ The only dissenter was Mayor Ames, who knocked the body for “kicking up so much dust” and predicted that permit revenues would plummet due to the poor publicity.¹⁰²

Successful as the grand jury was, the Ames Administration was still standing when the term of court ended. So were the crooks. Criminals refused to come back out into the open “until they [were] assured that the jury [had] drawn its pay and quit its job.”¹⁰³ But when the grand jury adjourned, it “was like the lifting of a threatening

⁹¹ *The Sodini Dives*, MINNEAPOLIS J., at 7, (May 16, 1901),

<https://www.newspapers.com/image/64226215/> [<https://perma.cc/K9SC-PG3H>].

⁹² *Roasts by the Dozen*, STAR TRIB., at 1, (May 30, 1901),

<https://www.newspapers.com/image/181076547/> [<https://perma.cc/SW6B-W4CJ>].

⁹³ *Indicted after Taking Bribe*, ST. PAUL GLOBE, at 3, (July 12, 1901),

<https://www.newspapers.com/image/84110047/> [<https://perma.cc/GGB3-BXXW>].

⁹⁴ *For Clark to Answer*, MINNEAPOLIS J., at 2, (May 21, 1901),

<https://www.newspapers.com/image/46455232/> [[https://perma.cc/G5CL-](https://perma.cc/G5CL-C8YT)

[C8YT](https://www.newspapers.com/image/46455232/)].<https://www.newspapers.com/image/46455232/>.

⁹⁵ *Adjournment*, STAR TRIB., at 5 (Aug. 21, 1901), <https://www.newspapers.com/image/180383399/>

[<https://perma.cc/34XF-M3SH>].

⁹⁶ *New Line of Investigation*, STAR TRIB., at 4, (July 9, 1901),

<https://www.newspapers.com/image/180361450/> [<https://perma.cc/D9MZ-6KF2>].

⁹⁷ *Roasts by the Dozen*, *supra* note 81, at 1; *The Session Expensive*, STAR TRIB., at 5 (Aug. 23, 1901),

<https://www.newspapers.com/image/180384592/> [<https://perma.cc/X2NM-2G83>].

⁹⁸ *Roasts by the Dozen*, *supra* note 81, at 1.

⁹⁹ *Labors Bear Fruit*, *supra* note 81, at 7.

¹⁰⁰ *The Grand Jury Springs a Sensation*, *supra* note __, at 9.

¹⁰¹ *A Useless Wonder*, MINNEAPOLIS J., at 4, (July 3, 1901),

<https://www.newspapers.com/image/79597493/> [<https://perma.cc/P2EG-U2A3>].

¹⁰² *Ames Has a Policy*, MINNEAPOLIS J., at 7, (June 4, 1901),

<https://www.newspapers.com/image/79597102/> [<https://perma.cc/PAH7-WRTY>].

¹⁰³ *Untitled*, PRINCETON UNION, at 4, (July 18, 1901), <https://www.newspapers.com/image/86213292/> [<https://perma.cc/4LHR-7HZY>].

cloud” as ne’er do wells scuttled back to their “old haunts as thick as ants.”¹⁰⁴ Perhaps unleashing pent up energy, the summer proved to be one of the busiest ever for the county in terms of criminal activity.¹⁰⁵ Some even wondered aloud whether the adjournment was merely a plot to lull criminals into a false sense of security.¹⁰⁶

The Second Grand Jury: April 1902 – July 1902

The second grand jury convened with the next session of court in April 1902. Its first charges were ordinary, tucked away on page twenty-two of the *Star Tribune*, but its impact would soon be extraordinary.¹⁰⁷ Hovey C. Clarke was selected as the foreman.¹⁰⁸ He would go on to make a name for himself as a good government crusader; Mayor Ames would simply name him “[t]he devil.”¹⁰⁹

Born in Flint, Michigan, Clarke’s family could be traced back to colonial days. After a failed career in railroads, he became secretary of a lumber organization. He flourished in the lumber industry, and by the early 1900s, a company he co-founded was purchasing hundreds of millions of feet of pine.¹¹⁰

His success made him one of Minneapolis’s most prominent citizens. He and his wife were members of high society groups.¹¹¹ When then-Vice President Theodore Roosevelt visited the city and held an exclusive banquet, Clarke was on the guest list.¹¹²

Even Clarke’s vacation escapades made it into the paper. While on a carriage ride in New York City, a horse became frightened and started bolting down Broadway with Clarke and his wife in tow. The driver was thrown off, so Clarke smashed the window to the front of the carriage, seized the reins, and drove the horse into a streetcar to stop. He and his wife escaped without a scratch.¹¹³

Under Clarke’s leadership, the main focus would not be on slot machines, but political machines. The new grand jury got down to business interviewing “big mitt”

¹⁰⁴ “Big Mitt” Men Back, MINNEAPOLIS J., at 7, (June 1, 1901),

<https://www.newspapers.com/image/79597078/> [<https://perma.cc/3L4M-NJL6>].

¹⁰⁵ *Criminals Are Busy*, MINNEAPOLIS J., at 8, (July 31, 1901),

<https://www.newspapers.com/image/79597859/> [<https://perma.cc/T7V2-RNXP>].

¹⁰⁶ *Has the Grand Jury Really Adjourned?*, STAR TRIB., at 10, (July 13, 1901),

<https://www.newspapers.com/image/180362857/> [<https://perma.cc/W3BA-YPSD>].

¹⁰⁷ *See Grand Jury’s Work*, STAR TRIB., at 22, (Apr. 13, 1902),

<https://www.newspapers.com/image/180306716/> [<https://perma.cc/VD9T-SGTK>].

¹⁰⁸ *Names Will Soon Be Known*, MINNEAPOLIS J., at 1, (May 9, 1902),

<https://www.newspapers.com/image/76281535/> [<https://perma.cc/YY3S-366K>].

¹⁰⁹ *His Face Familiar*, MINNEAPOLIS J., at 7, (May 28, 1902),

<https://www.newspapers.com/image/76282577/> [<https://perma.cc/F93V-VRGK>].

¹¹⁰ AMERICAN LUMBERMEN: THE PERSONAL HISTORY AND PUBLIC AND BUSINESS ACHIEVEMENTS OF ... EMINENT LUMBERMEN OF THE UNITED STATES 141, 143 (1906).

¹¹¹ *See, e.g., A Treat in Store*, MINNEAPOLIS J., at 5, (Oct. 19, 1901),

<https://www.newspapers.com/image/79598990/> [<https://perma.cc/X4W3-JXWG>]; *Guid Business Meeting*, MINNEAPOLIS J., at 23, (Oct. 12, 1901), [<https://perma.cc/FDQ3-GWVK>]; *Menu a Dainty One*, MINNEAPOLIS J., at 15, (Nov. 16, 1901), [<https://perma.cc/K4SG-ULT9>].

¹¹² *Minnesota Men Honor Roosevelt*, MINNEAPOLIS J., at 5, (Sept. 3, 1901),

<https://www.newspapers.com/image/79598309/> [<https://perma.cc/T6N2-M2GY>].

¹¹³ *Hovey Clarke’s Thrilling Ride*, MINNEAPOLIS J., at 6, (Dec. 20, 1901),

<https://www.newspapers.com/image/79601158/> [<https://perma.cc/ZE6T-D7KB>].

men in the county jail.¹¹⁴ They gave “names, dates, and minute details” about bribes for police protection.¹¹⁵ This gave the investigation a strong foundation from the get-go. The panel also interviewed numerous women who worked in the red-light district about the bribes they had to pay to city officials.¹¹⁶

Irwin A. Gardner stood out during these preliminary sessions. Gardner was a medical student with a fierce loyalty to Mayor Ames. Although Gardner bore Ames’s strong affection, he cared little for the rest of the men in the corruption scandal and testified candidly to the grand jury. By admission, he was the go-between or “collector” who gathered monthly tribute from women outside of prostitution houses.¹¹⁷ Though he wore a police star, he was not on the department payroll—his paychecks came from the mayor’s privy purse.¹¹⁸

As the grand jury chugged along, Mayor Ames’s attitude grew from one of indifference to contempt. On May 8, he said he was surprised the grand jury was snooping around but expressed no fear about the outcome.¹¹⁹ A mere three days later, his views of the body dimmed considerably. He called it “a browbeating, inquisitorial body, exempt from punishment for its offenses” and vowed to beat it.¹²⁰

Across the river in St. Paul, its own grand jury declared its city police department “almost perfect.”¹²¹ Back in Minneapolis, the grand jury was handing out a less heartwarming gift to its police: indictments. On May 12, the first batch of indictments against police was released.¹²² Officers John E. Morrissey and Jim C. Howard were arraigned on bribery charges, accused of releasing suspects in exchange for \$20.¹²³ Though the number of indictments was fewer than expected, the grand jury assured the judge it still had work to do.¹²⁴

The members of the police force grew suspicious of each other and started passing along tips and expressing a willingness to testify.¹²⁵ In fact, so many police called in tips that a majority of the evidence the grand jury collected came from this source during this phase of the investigation.¹²⁶ By this point, the police force was “pretty thoroughly disorganized” and the city “might just as well be unpoliced” until

¹¹⁴ *Seek Justice and Revenge*, ST. PAUL GLOBE, at 7, (May 7, 1902),

<https://www.newspapers.com/image/84109484/> [<https://perma.cc/X9A6-NBQ2>].

¹¹⁵ *Names Will Soon Be Known*, *supra* note 97, at 1.

¹¹⁶ *Women Before Grand Jury*, STAR TRIB., at 7, (May 8, 1902),

<https://www.newspapers.com/image/180110646/> [<https://perma.cc/YJ2F-E8WU>].

¹¹⁷ *Names Will Soon Be Known*, *supra* note 97, at 1-2.

¹¹⁸ *Id.* at 2.

¹¹⁹ *Mayor Ames Is Not Worried*, ST. PAUL GLOBE, at 7, (May 8, 1902),

<https://www.newspapers.com/image/84109513/> [<https://perma.cc/9BM5-BNVD>].

¹²⁰ *Mayor Ames’ Caustic Remarks*, ST. PAUL GLOBE, at 9, (May 11, 1902),

<https://www.newspapers.com/image/84109581/> [<https://perma.cc/L2GD-N6KZ>].

¹²¹ *Grand Jury Praises St. Paul Police Force*, ST. PAUL GLOBE, at 2, (May 30, 1902),

<https://www.newspapers.com/image/84110355/> [<https://perma.cc/MN8Y-NETB>].

¹²² *Bills for Police*, MINNEAPOLIS J., at 6, (May 12, 1902),

<https://www.newspapers.com/image/76281757/> [<https://perma.cc/T8XQ-HG2E>].

¹²³ *The Grand Jury Indicts Morrissey and Howard*, STAR TRIB., at 7, (May 13, 1902),

<https://www.newspapers.com/image/180110818/> [<https://perma.cc/T5V2-DH5N>].

¹²⁴ *Bills for Police*, *supra* note 111, at 6.

¹²⁵ *Names Will Soon Be Known*, *supra* note 97, at 2.

¹²⁶ *Bribery Cases on Wednesday*, STAR TRIB., at 7, (May 27, 1902),

<https://www.newspapers.com/image/180111276/> [<https://perma.cc/E569-PLH2>].

the investigation was resolved.¹²⁷

Things went from bad to worse for the administration when the holy grail of the investigation was found. Some poor shyster recorded the proceeds from their scams in exquisite detail. The most visceral piece of evidence yet and the book was quickly dubbed the “big mitt” ledger by the press.¹²⁸

Not coincidentally, it was at this point that Mayor Ames decided to fold his hand. Ink from the “big mitt ledger” story was barely dry when the *Star Tribune* reported he would retire from politics to take a job in West Baden, Indiana.

This bombshell sent his minions into disarray, as they had all expected the gravy train to keep chugging along.¹²⁹ The self-preserving political machine kicked into high gear to try to convince Mayor Ames to stay in office.¹³⁰ It also opened up a yawning vacuum in local politics.¹³¹ Some maintained that the story was a political feint to draw opponents into the open and then smash them.¹³²

Indeed, on the same day the *Tribune* was writing Ames’s political obituary, the *St. Paul Globe* issued a statement by Mayor Ames denying reports he planned to leave: “I have not decided to leave this city, nor do I ever propose to give up my citizenship in Minneapolis” and hinted he would be on the ballot for mayor.¹³³

Doubling down the next day, he said he had “no idea of leaving Minneapolis or of retiring from the political game” and promised to be a candidate.¹³⁴ He released an unequivocal statement on May 15 saying “there is the blankest lot of liars in the newspaper business that I ever met anywhere . . . I am not going to retire from politics.” At the same time, his friends went to the press to put out quotes like: “[h]e will live the rest of his days in Minneapolis and die here.”¹³⁵

Two days later, the grand jury unleashed a new wave of indictments. It nailed Gardner (the “go between” man for bribes), the police superintendent Fred Ames, and plainclothes officer Christopher C. Norbeck.¹³⁶ All of them were indicted on bribery charges.¹³⁷ Many more would follow. The administration became “honey-

¹²⁷ *Jurors Hard to Get*, ST. PAUL GLOBE, at 5, (June 13, 1902),

<https://www.newspapers.com/image/84110877/> [<https://perma.cc/2WPG-37WP>], <https://www.newspapers.com/image/84110877/>.

¹²⁸ See *Bills for Police*, *supra* note 111, at 6, MINNEAPOLIS J. (May 12, 1902),

<https://www.newspapers.com/image/76281757/> [<https://perma.cc/X5XT-CL9R>].

¹²⁹ *Mayor A. A. Ames Will Retire from Politics*, STAR TRIB., (May 14, 1902),

<https://www.newspapers.com/image/180110834> [<https://perma.cc/ZL3Z-SGKY>].

¹³⁰ *Machine Men Try to Keep Up Courage*, STAR TRIB., at 7 (May 16, 1902),

<https://www.newspapers.com/image/180110895/> [<https://perma.cc/PHN7-UXBE>].

¹³¹ *But One Answer*, STAR TRIB., at 2, (May 14, 1902), <https://www.newspapers.com/image/180110835> [<https://perma.cc/52JW-WKK8>].

¹³² *Mayor Ames’ Retirement Makes Politicians Talk*, STAR TRIB., at 7, (May 15, 1902),

<https://www.newspapers.com/image/180110867/> [<https://perma.cc/PV3E-EJM8>].

¹³³ *Mayor Ames Is Much in Demand*, ST. PAUL GLOBE, at 7, (May 14, 1902),

<https://www.newspapers.com/image/84109732/> [<https://perma.cc/S6ZB-ZGBQ>].

¹³⁴ *Ames Not Yet Out*, MINNEAPOLIS J., at 6, (May 15, 1902),

<https://www.newspapers.com/image/76281893/> [<https://perma.cc/6DLQ-75JS>].

¹³⁵ *Id.*

¹³⁶ *Ames Says “Not Guilty”*, MINNEAPOLIS J., at 1, (May 17, 1902),

<https://www.newspapers.com/image/76281959/> [<https://perma.cc/UM2G-TLR7>].

¹³⁷ *Id.*

combed with distrust.”¹³⁸ The penalties for bribery could be steep, as much as 10 years in prison and a \$5000 fine, and preclusion from public office.¹³⁹

That week, Mayor Ames fled to St. Paul.¹⁴⁰ Thus began a waiting game between the mayor and grand jury.¹⁴¹ Mayor Ames refused to discuss the grand jury or his West Baden job offer.¹⁴² A week after the escape, the mayor was still missing in action.¹⁴³ On the eighth day, he confirmed he would leave Minneapolis to become superintendent of a hotel in West Baden.¹⁴⁴ Rumor had it that he had pumped \$50,000 of his ill-gotten gains into the stock of the hotel,¹⁴⁵ and he claimed the building would be “one of the finest and largest in the country.”¹⁴⁶

Meanwhile, the trials got underway at an alarmingly quick pace compared to modern standards. Norbeck was first up a few days after indictments.¹⁴⁷ The grand jury announced it was prepared to hire its own attorney to bring the case and hyperbolically said it was prepared to spend half a million dollars to prosecute the case.¹⁴⁸ It did actually hire its own investigators, though the courts refused to reimburse them for the costs.¹⁴⁹

Witnesses accused Norbeck of meeting in saloons, sporting houses, and private homes to receive lists of criminals who would receive police protection.¹⁵⁰ His trial ground to a halt when he took a page out of Mayor Ames’s book and made a run for it.¹⁵¹ Before leaving, he cleaned out his bank account, leaving his wife and children with a paltry \$4.09 to fend for themselves.¹⁵² He shortchanged his defense attorney, too.¹⁵³

Before fleeing the scene, Norbeck called up a journalist to confess. He said that when Ames came to power, he “had to obey the damndest orders that were ever given a policeman. A white man couldn’t obey them unless he was drunk, and I’ve been

¹³⁸ *Id.*

¹³⁹ *Indictment Against Supt. Fred W. Ames*, STAR TRIB., at 7, (May 18, 1902), <https://www.newspapers.com/image/180110940/> [<https://perma.cc/F74B-RFR6>].

¹⁴⁰ *Ames Says “Not Guilty,”* MINNEAPOLIS J. (May 17, 1902) <https://www.newspapers.com/image/76281959/> [<https://perma.cc/ZCA4-DXZH>].

¹⁴¹ *May Ask The Mayor to Talk*, STAR TRIB., at 7, (May 21, 1902),

<https://www.newspapers.com/image/180111059/> [<https://perma.cc/RF8M-4V9A>].

¹⁴² *Mayor Says Nothing on Several Subjects*, STAR TRIB., at 7, (May 21, 1902), <https://www.newspapers.com/image/180111059/> [<https://perma.cc/28CA-FZ6Q>].

¹⁴³ *Id.*

¹⁴⁴ *Ames Says He’s Out*, MINNEAPOLIS J., at 6, (May 22, 1902)

<https://www.newspapers.com/image/76282263/> [<https://perma.cc/XDE3-8A3G>].

¹⁴⁵ *Id.*

¹⁴⁶ *Ames Admits Intention to Leave City*, STAR TRIB., at 7, (May 23, 1902),

<https://www.newspapers.com/image/180111109/> [<https://perma.cc/H2SG-J4S6>].

¹⁴⁷ *Norbeck’s Case Comes to Trial*, MINNEAPOLIS J., at 1, (May 22, 1902),

<https://www.newspapers.com/image/76282224/> [<https://perma.cc/LP8M-BW47>].

¹⁴⁸ *Id.*

¹⁴⁹ *County Is not Liable*, STAR TRIBUNE, at 7, (July 1, 1902),

<https://www.newspapers.com/image/180804444/> [<https://perma.cc/FT3C-BT3R>].

¹⁵⁰ *Gardner Given a Six-Year Sentence*, STAR TRIB., at 1, (June 15, 1902),

<https://www.newspapers.com/image/180111864/> [<https://perma.cc/AVM5-CAJE>].

¹⁵¹ *Norbeck Confession and Flight*, STAR TRIB., at 2, (June 18, 1902)

<https://www.newspapers.com/image/180112005/> [<https://perma.cc/LX2H-6L9F>].

¹⁵² *Id.*

¹⁵³ *Id.*

drinking a good deal.”¹⁵⁴ By his telling, Ames was charging the gamblers and prostitutes \$16,000 a month, and he himself took a cut of it.¹⁵⁵ After a week out on the lamb, he was caught, hauled back, pled guilty, and testified that Chief Ames told him to commit perjury in other cases.¹⁵⁶

Gardner’s trial kicked off a few days after Norbeck’s started. Gardner—only twenty-nine-years-old¹⁵⁷—was late to his own arraignment because he was taking a school exam.¹⁵⁸ At trial, it quickly became apparent to spectators that the defense team was “completely at sea.”¹⁵⁹ Even W.W. Erwin, one of the most acclaimed defense attorneys in the area, was flustered and seemed as surprised as anyone else by witnesses’ answers to his questions.¹⁶⁰ It only took one ballot for the jury to unanimously convict.¹⁶¹ So as to avoid looking lackadaisical, the jury waited a few hours before announcing its verdict.¹⁶² Gardner received six years of hard labor at Stillwater prison.¹⁶³

Around the same time, Police Captain George A. Harvey was charged with perjury and bribery. Upon his arrest, he broke down. His face shone with cold sweat and he cried out “[o]h, my God, what shall I do?” before burying his face in his hands.¹⁶⁴ He was quickly found guilty. His conviction was called a “stunning blow . . . full between the eyes of the slimy reptile, Corruption.”¹⁶⁵

The case against Norm W. King, the former chief of detectives, provided a strange interlude. Unlike most of his peers, he was not charged with bribery. Instead, he was charged with stealing the Hooper diamond, a precious stone that was pilfered from a train that was carrying Theodore Roosevelt’s Rough Riders to his presidential inauguration in Washington.¹⁶⁶ When his case went to trial, he was convicted.¹⁶⁷ Several other police officers were also indicted on corruption charges.¹⁶⁸ So many police officers were indicted and convicted that the grand jury saved the city \$4000

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Chief Ames Told Norbeck What to Say in Gardner Case*, STAR TRIB., at 1, (July 4, 1902), <https://www.newspapers.com/image/180804474> [<https://perma.cc/XH78-2R6Y>].

¹⁵⁷ *Gardner Must Do Six Years; King Indicted*, *supra* note 142.

¹⁵⁸ *Indictment Against Supt. Fred W. Ames*, *supra* note 125, at 7.

¹⁵⁹ *Loomis Helps Bind the Chain around Irwin A. Gardner*, MINNEAPOLIS J., at 1, (June 4, 1902), <https://www.newspapers.com/image/76282820> [<https://perma.cc/HDV6-7EGZ>].

¹⁶⁰ *Id.*

¹⁶¹ *Irwin A. Gardner Guilty of Bribery*, STAR TRIB., at 1, (June 11, 1902),

<https://www.newspapers.com/image/180111751> [<https://perma.cc/P8TY-35PF>].

¹⁶² *Id.*

¹⁶³ *Gardner Must Do Six Years; King Indicted*, MINNEAPOLIS J., at 1, (June 14, 1902)

<https://www.newspapers.com/image/76283326> [<https://perma.cc/4ED9-UBT4>].

¹⁶⁴ *Harvey Broken Down*, STAR TRIB., at 2, (June 17, 1902),

<https://www.newspapers.com/image/180111979/> [<https://perma.cc/6XYB-GWD6>].

¹⁶⁵ *Detective Harvey Hurried to Jail from Witness Stand*, MINNEAPOLIS J., at 1, (June 16, 1902),

<https://www.newspapers.com/image/76283429/> [<https://perma.cc/JB6D-YXVW>].

¹⁶⁶ *Gardner Must Do Six Years; King Indicted*, MINNEAPOLIS J., at 1, (June 14, 1902),

<https://www.newspapers.com/image/76283326> [<https://perma.cc/52TL-RP46>].

¹⁶⁷ *The Jury Reports*, MINNEAPOLIS J., at 2, (June 30, 1902),

<http://www.newspapers.com/image/76284152/> [<https://perma.cc/WZD9-4MQM>].

¹⁶⁸ *Minneapolis Officials Guilty of Corruption*, PERU WKLY. DERRICK, at 1, (July 19, 1902),

<http://www.newspapers.com/image/419477430/> [<https://perma.cc/YL7B-RAY5>].

in payroll costs.¹⁶⁹

Chief Ames's trial drew out the largest crowds ever seen at the court.¹⁷⁰ Within a week, he was found not guilty. After the acquittal, the grand jury expressed its displeasure with the performance of the county attorney who tried the case and asked that an assistant county attorney could take over for a new trial.¹⁷¹ Fred Ames then employed a now familiar tactic: book it. New indictments were issued for Chief Ames, but he was already past city lines.¹⁷² The mayor's secretary, Tom Brown, became acting chief of police in his stead.¹⁷³

Fred Ames eventually returned and was found guilty at his second trial of accepting a bribe from a prostitute.¹⁷⁴ Within moments of the verdict, newsboys were out screaming "extra" and citizens congregated to discuss.¹⁷⁵ The conviction meant that Fred Ames would be forever barred from public office.¹⁷⁶

Finally, on June 18, 1902, Mayor Ames was arraigned before a crowded courtroom with a gaggle of journalists and courtroom artists.¹⁷⁷ He returned to the city as a "gray haired shattered old man," and hobbled into the courtroom with the help of a heavy cane.¹⁷⁸ Though there were many potential crimes to choose from, the grand jury charged him with only a few. First, offering a bribe of \$1500 to a county commissioner to influence his vote for the selection of a county sheriff.¹⁷⁹ Additionally, he was charged with receiving \$15 bribes from several prostitutes.¹⁸⁰

At the arraignment on July 10, his attorney said they were ready for trial that very afternoon, so confident were they in the righteousness of their case. They very nearly got their wish: trial was set for July 14.¹⁸¹ Not waiting to see the outcome, Mayor Ames left the city again, claiming ill health.¹⁸²

Mayor Ames left the city on July 15, 1902.¹⁸³ He was found living on a farm in

¹⁶⁹ *Will Save Money on Police Pay Roll*, MINNEAPOLIS STAR TRIB., at 7, (July 3, 1902), <https://www.newspapers.com/image/180804468/> [<https://perma.cc/R2XK-RU3G>].

¹⁷⁰ *Members of Thirteenth*, MINNEAPOLIS J., at 2, (July 4, 1902),

<https://www.newspapers.com/image/76284456/> [<https://perma.cc/LJ3A-F4HF>].

¹⁷¹ *Boardman Mad at Grand Jury*, ST. PAUL GLOBE, at 7, (July 10, 1902),

<https://www.newspapers.com/image/84111855/> [<https://perma.cc/GN6X-3G5S>].

¹⁷² *Says He'll Return*, MINNEAPOLIS J., at 6, (July 10, 1902),

<https://www.newspapers.com/image/76284967/> [<https://perma.cc/X8B8-SMYL>].

¹⁷³ *From Reporter to Mayor's Chair*, MINNEAPOLIS STAR TRIB., at 6, (July 16, 1902),

<https://www.newspapers.com/image/180804665/> [<https://perma.cc/V58Z-TVHC>].

¹⁷⁴ *Col. Fred W. Ames Declared Guilty*, MINNEAPOLIS STAR TRIB., at 1, (Oct. 2, 1902),

<https://www.newspapers.com/image/180831149/> [<https://perma.cc/TS23-GZF4>].

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Mayor A.A. Ames Forced to Face Bar of Justice*, MINNEAPOLIS TRIB., at 1-2, (June 18, 1902),

<https://www.newspapers.com/image/180112003> [<https://perma.cc/VH9U-A4QA>].

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 1.

¹⁸⁰ *Mayor Is Indicted*, ST. PAUL GLOBE, at 7, (July 10, 1902),

<https://www.newspapers.com/image/84111855/> [<https://perma.cc/L8KD-37V3>].

¹⁸¹ *Mayor A.A. Ames Is Arraigned*, MINNEAPOLIS TRIB., at 1, (July 10, 1902),

<https://www.newspapers.com/image/180804564/> [<https://perma.cc/RNB7-EVJ4>].

¹⁸² *Ames in Bad Shape*, MINNEAPOLIS J., at 1, (July 15, 1902),

<https://www.newspapers.com/image/76285273/> [<https://perma.cc/N68T-XJLR>].

¹⁸³ *Jones Is Out, Haynes Is In*, MINNEAPOLIS TRIB., at 7, (Jan. 6, 1903),

<https://www.newspapers.com/image/180118217/> [<https://perma.cc/BXK8-3V6G>].

New Hampshire owned by his brother-in-law.¹⁸⁴ By February 1903, he was arrested,¹⁸⁵ and after some procedural wrangling, he was back in Minnesota by March.¹⁸⁶ His trial began in April,¹⁸⁷ and he was convicted in May.¹⁸⁸

He appealed his conviction to the state supreme court and won. Acting like a trial court, the high court parsed the evidence and decided that the prosecution had come up short. Although it conceded there was plenty of evidence showing a series of bribes, it said that there was no evidence that the bribe payers were acting jointly.¹⁸⁹ It therefore overturned the conviction.¹⁹⁰ This conclusion was particularly striking since the same court not only affirmed Fred Ames's conviction, it editorialized that the state's evidence showed "a case of the clearest and most palpable sort of corruption, and a willful and flagrant violation of official duty."¹⁹¹

Aftermath: July 1902 – September 1902

Throughout the investigation, the grand jury had not been shy. When the county attorney said there would be no more municipal corruption cases due to lack of funds, the grand jury expressed its displeasure.¹⁹² Later it disregarded his instructions and kept on investigating.¹⁹³ By law, the grand jury had to take counsel from the county attorney, but that did not seem to dissuade them.¹⁹⁴ When prosecutors refused to work with the grand jury, it hired its own detectives to hunt down evidence.¹⁹⁵ A judge ruled that the county did not have to reimburse the grand jury for these costs.¹⁹⁶

The grand jury even took the lead on charging strategy. It held a special session to add indictments to Mayor Ames and others for conspiracy, rather than simply bribery.¹⁹⁷ Although conspiracy was a much lesser offense under state law than bribery, it was reckoned that charging both would make it easier to secure a conviction on at least one count.¹⁹⁸ At the same time, many within the body felt that

¹⁸⁴ *Ex-Mayor Ames Is a Dying Man*, ST. PAUL GLOBE, at 3, (Jan. 24, 1903),

<https://www.newspapers.com/image/85088718/> [<https://perma.cc/E2WN-X4ZJ>].

¹⁸⁵ *Ex-Mayor Ames*, WORTHINGTON ADVANCE, at 1, (Feb. 20, 1903),

<https://www.newspapers.com/image/192566888/> [<https://perma.cc/75HF-YPM9>].

¹⁸⁶ *Ex-Mayor Ames Is Home Again*, ST. PAUL GLOBE, at 3, (Mar. 18, 1903),

<https://www.newspapers.com/image/85091577/> [<https://perma.cc/L6QH-NZC4>].

¹⁸⁷ *Ames on Trial*, PIONEER, at 2, (Apr. 28, 1903), <https://www.newspapers.com/image/83876327/> [<https://perma.cc/RN9P-VCX5>].

¹⁸⁸ *Dr. Ames Convicted*, MOWER COUNTY TRANSCRIPT, at 6, (May 13, 1903),

<https://www.newspapers.com/image/143612089/> [<https://perma.cc/KU6M-5SBM>].

¹⁸⁹ *State v. Ames*, 98 N.W. 190, 194 (Minn. 1904).

¹⁹⁰ *Id.* at 195.

¹⁹¹ *State v. Ames*, 96 N.W. 330, 335 (Minn. 1903).

¹⁹² *All Cases Go Over*, ST. PAUL GLOBE, at 7, (July 22, 1902),

<https://www.newspapers.com/image/84112291/> [<https://perma.cc/F983-ZYXF>].

¹⁹³ *Grand Jury Holds Session*, ST. PAUL GLOBE, at 8, (July 23, 1902),

<https://www.newspapers.com/image/84112323/> [<https://perma.cc/DU8Y-7UVM>].

¹⁹⁴ *Grand Jury Again*, STAR TRIB., at 7, (July 22, 1902),

<https://www.newspapers.com/image/180804758/> [<https://perma.cc/KG36-9887>].

¹⁹⁵ LEROY D. CLARK, *THE GRAND JURY: THE USE AND ABUSE OF POLITICAL POWER* 30 (1975).

¹⁹⁶ *County Is Not Liable*, *supra* note 149, at 7.

¹⁹⁷ *Conspiracy*, MINNEAPOLIS J., at 6, (Aug. 7, 1902), <https://www.newspapers.com/image/76286412/> [<https://perma.cc/F25T-TJQ7>].

¹⁹⁸ *Id.*

the penalty was too small to rectify the public harm, and thus fought against tacking on the extra charge.¹⁹⁹ They ultimately added it.²⁰⁰

With Mayor Ames in exile, executive power passed to the president of the city council. The president, however, did not assert himself and had scheduled a vacation out east.²⁰¹ As a result, the vice president of the city council assumed command.²⁰²

At least that's what the city charter said. Though not listed on the city organization chart, the grand jury assumed a prominent role, particularly its foreman Hovey C. Clarke, after the indictments were over. When the city council failed to do anything in response to Chief Ames's extended absence, Clarke dressed them down for their inaction, urged the chair of the police committee to remove Chief Ames, and harangued the acting chief of police.²⁰³ He also lobbied to see a particular candidate selected for chief of police.²⁰⁴ During the council vice president's reign, he was "guided by the advice of the grand jury and with at least an implied promise of protection from that body." Because of its continuing prosecutorial power, "the grand jury seems to hold the whip hand."²⁰⁵ So great was the panel's influence that it assumed the "role of committee of public safety."²⁰⁶

As August drew to a close, the grand jury was putting the finishing touches on its report.²⁰⁷ The seven-page document summarized the prodigious work of the body and also groused about the handicaps it faced. Though thirty public officials were indicted, it noted that no funds were provided for witness fees, and there was no means to bring in out-of-state witnesses. As a result of these hurdles, evidence could not be collected that would have implicated other officials. In keeping with custom, the grand jury also surveyed the county jail, police station, poor farm, and workhouse. All of the buildings were found to be satisfactory except the police station, whose infrastructure was as bad as its workforce.²⁰⁸

The April term grand jury met approximately thirty times, and each juror made about \$50. By August, the total cost was \$1283.68. The jurors voluntarily contributed far more than their salaries to cover expenses not authorized by law.²⁰⁹ Even so, the county commissioners scrutinized the bill. They questioned whether the grand jury

¹⁹⁹ *Grand Jury's Work*, MINNEAPOLIS J., at 6, (Aug. 8, 1902),

<https://www.newspapers.com/image/76286467/> [<https://perma.cc/63S4-45DZ>].

²⁰⁰ *A Pair of "Blankets,"* MINNEAPOLIS J., at 6, (Aug. 11, 1902),

<https://www.newspapers.com/image/76286596/> [<https://perma.cc/2WQE-8FC3>].

²⁰¹ *From Reporter to Mayor's Chair*, *supra* note 173, at 6.

²⁰² *Powers Is Mayor*, ST. PAUL GLOBE, at 3, (July 25, 1902),

<https://www.newspapers.com/image/84112362/> [<https://perma.cc/B7F4-CMUS>].

²⁰³ *Naming a New Sec'y, Powers Now Waits for Jones' Return*, MINNEAPOLIS J., at 1, (Aug. 2, 1902),

<https://www.newspapers.com/image/76286144/> [<https://perma.cc/YD2N-DB6R>].

²⁰⁴ *Working for Doyle*, MINNEAPOLIS J., at 6, (Aug. 6, 1902),

<https://www.newspapers.com/image/76286372/> [<https://perma.cc/MHY7-EZJU>].

²⁰⁵ *Naming a New Sec'y*, *supra* note 203, at 1.

²⁰⁶ *Id.*

²⁰⁷ *It Will Be a Scorching*, MINNEAPOLIS J., at 1, (Aug. 25, 1902),

<https://www.newspapers.com/image/76287226/> [<https://perma.cc/2RD3-F6NJ>].

²⁰⁸ *Vast Revenue Was Collected*, MINNEAPOLIS J., at 1, (Sept. 2, 1902),

<https://www.newspapers.com/image/76287617/> [<https://perma.cc/37R4-LYTA>].

²⁰⁹ *Grand Jury Worked Well*, STAR TRIB., at 3, (Aug. 16, 1902),

<https://www.newspapers.com/image/180805304/> [<https://perma.cc/6HZ4-P835>].

had the right to hire carriages to transport some witnesses and hunt down others.²¹⁰

Not content to leave its clean-up work unfinished, the grand jury decided to create an outline for the successor grand jury to continue the investigation.²¹¹ The new grand jury pledged to follow the April grand jury's advice "to a T" and moved forward with cases against numerous defendants.²¹²

Acting Mayor Jones set about to right the wrongs of the Ames regime. His first official act was the replacement of Fred Ames as police superintendent.²¹³ Within a few months of taking office, he had racked up an impressive track record. He reorganized the police department, abolished public gambling, suppressed slot machine gambling, ended cooperation with criminals, enforced wine room bans and liquor licenses, shuttered saloons, reduced liquor sales, and did away with the practice of allowing businesses in the red-light district to pay a fine in exchange for amnesty.²¹⁴

A celebratory banquet was held for Hovey Clarke to commend his work on the grand jury. Democratic and Republican politicians tripped over each other to pledge their support for the efforts of municipal reform that the grand jury embodied.²¹⁵ Newspapers were unanimous in their praise. The panel was hailed as the "most famous and feared of all grand juries ever drawn in this county."²¹⁶ The *New York Post* wrote, "the city is to be congratulated that its grand jury and its prosecuting officers are doing their duty with relentless courage."²¹⁷ Most profound was the *Star Tribune*, which wrote that the inquest had "made a political revolution by the orderly processes of law."²¹⁸

SAN FRANCISCO, CALIFORNIA

The name "San Francisco" conjures images of majestic sights—the Golden Gate Bridge, zigzagging roads blanketed with flowers, and quaint trolley cars—but the city's past was grittier. Though named for a saint, sinners ruled in the 1800s. By the close of the Civil War, it was an "ugly, raw boomtown where memories of vigilantes

²¹⁰ *Balk on Bills for Carriages*, STAR TRIB., at 13, (Aug. 17, 1902)

<https://www.newspapers.com/image/180805356/?terms=%22grand%2Bjury%22>
[<https://perma.cc/CWV8-DKET>].

²¹¹ *Investigation May Keep Up*, STAR TRIB., at 6, (Aug. 28, 1902),

<https://www.newspapers.com/image/180805894/> [<https://perma.cc/UHL7-QJ7D>].

²¹² *Tells of Graft*, STAR TRIB., at 8, (Sept. 27, 1902), <https://www.newspapers.com/image/180830653/>
[<https://perma.cc/DB4Y-BF9M>].

²¹³ *Jones Is out, Haynes Is in*, STAR TRIB., at 7, (Jan. 6, 1903),

<https://www.newspapers.com/image/180118217/> [<https://perma.cc/PD4W-MEUD>].

²¹⁴ *The Acting Mayor's Record in Reform*, MINNEAPOLIS J., at 14, (Dec. 31, 1902),

<https://www.newspapers.com/image/76298180/> [<https://perma.cc/LZ27-NV4M>].

²¹⁵ *That Non-partisan Feeling*, MINNEAPOLIS J., at 4, (Sept. 19, 1902),

<https://www.newspapers.com/image/76288350/> [<https://perma.cc/2CX5-3R2X>].

²¹⁶ *Norbeck Case on; Grand Jury Meets; Gardner Wavering*, MINNEAPOLIS J., at 1, (June 13, 1902),

<https://www.newspapers.com/image/76283252/> [<https://perma.cc/UL7M-ZFR6>].

²¹⁷ *As Others See Us*, MINNEAPOLIS J., at 4, (July 10, 1902),

<https://www.newspapers.com/image/76284955/> [<https://perma.cc/P48W-86RD>].

²¹⁸ *Lest We Forget*, STAR TRIB., at 4, (Aug. 29, 1902), <https://www.newspapers.com/image/180805940/>
[<https://perma.cc/HY6S-FQ89>].

were still fresh, the streets were muddy.”²¹⁹ For decades afterward, the city’s tenderloin district was a “haven for criminals and prostitutes of every sort; and it had its own crude laws, its definite social gradations.”²²⁰

Railroad companies soon gobbled up the city, aided and abetted by “Blind Chris” Buckley, the mayor on the railroads’ payroll.²²¹ Called “Blind Chris” because he lost his sight as an adult,²²² he lost his conscience somewhere along the way too. When a grand jury began investigating him, he packed it full of his stooges.²²³ When a judge eventually dismissed his plants from the panel, Buckley took “an extended vacation” and his cronies “took to their heels.”²²⁴

Corporate lawyers for the Southern Railroad Company, however, were able to convince a superior court judge that the grand jury was invalid.²²⁵ Thousands took to the streets in protest, and the grand jury defiantly indicted two legislators and the city attorney before the California Supreme Court declared it null and void.²²⁶ Buckley and his entourage quickly returned and “all boodledom rejoiced.”²²⁷ A few years later, another grand jury issued a scathing report, but little came of it.²²⁸

In 1902, Eugene E. Schmitz was elected mayor. Tall, handsome, and genial, he was a musician by training.²²⁹ But as a politician, he doled out patronage to his family. Brother Frank was the superintendent of the Almshouse, and brother Herbert was connected with the Snook Company, a firm that did extensive business with the city poorhouse and hospital and had a suspicious knack for landing city contracts elsewhere.²³⁰

But if Mayor Schmitz held the title of chief executive, machine boss Abe Ruef—the “shrewdest of the city’s long succession of political bosses”—was the power behind the throne.²³¹

Ruef’s political machine controlled every part of the local government. He and his cronies were “so greedy they would eat the paint off a house.”²³² Indeed, after the great earthquake devastated San Francisco, his cronies plundered money sent in

²¹⁹ Carl Nolte, *134 years of the Chronicle*, S.F. GATE, (June 16, 1999), <https://www.sfgate.com/news/article/134-Years-of-the-Chronicle-2924997.php>. [<https://perma.cc/AL6N-M6LJ>].

²²⁰ WORKS PROGRESS ADMIN., *SAN FRANCISCO IN THE 1930S: THE WPA GUIDE TO THE CITY BY THE BAY* 106 (2011).

²²¹ *See id.* at 105-06.

²²² Michael Vitiello & J. Clark Kelso, *Reform of California’s Grand Jury System*, 35 LOY. L.A. L. REV. 513, 521 n.59 (2002).

²²³ *Id.* at 521.

²²⁴ *Id.* (quoting RICHARD D. YOUNGER, *THE PEOPLE’S PANEL* 200 (1963)).

²²⁵ YOUNGER, *supra* note 20, at 201.

²²⁶ *Id.*

²²⁷ *Id.* at 202.

²²⁸ *Id.* at 203.

²²⁹ WORKS PROGRESS ADMIN., *supra* note 220, at 106.

²³⁰ *All City Offices Under Jury Investigation*, S.F. CALL, at 2, (Dec. 17, 1906) <https://www.newspapers.com/image/78175362>; [<https://perma.cc/QDL9-7QQ5>]; *Snook’s Deals with the City*, S.F. CHRON., at 4, (Dec. 25, 1906) <https://www.newspapers.com/image/27591226/> [<https://perma.cc/JPY6-DUCG>].

²³¹ WORKS PROGRESS ADMIN., *supra* note 220, at 106.

²³² Gary Kamiya, *Boss Abe Ruef and S.F. Political Machine Brought Down*, S.F. CHRONICLE, at 1 (July 17, 2015), <https://www.sfchronicle.com/bayarea/article/Boss-Abe-Ruef-and-S-F-political-machine-brought-6391427.php> [<https://perma.cc/2UXQ-MWRB>].

from around the country to aid the victims.²³³ One official tried to fleece an elderly priest.²³⁴ Regardless, his machine won three straight elections, culminating in a 1905 victory.²³⁵ So bad was the state of affairs that another mayor of the period said at his inaugural address, “[t]he people expect their officials to steal, they are disappointed if they do not.”²³⁶ San Francisco earned the title of “the wickedest city in the world.”²³⁷

Suffice to say, the grand jury that would be drawn in 1906 would have a lot on its plate. Fortunately, California has traditionally had some of the strongest grand juries in the country. The state's first constitution provided the right to a grand jury, and the institution was “an integral part of its legal and government machinery.”²³⁸ A study confirmed that the grand juries performed their oversight function well.²³⁹

In the early 1900s, the grand jury system was still robust in the Golden State. When the Los Angeles mayor had evidence of graft in the city, the district attorney invited him to come to turn over what he had. The mayor said he would not tell the prosecutor, opting to go directly to the grand jury that was investigating.²⁴⁰ When a former sheriff was charged with corruption, he did not go to the prosecutor to beg for mercy, but to the foreman of a grand jury, where the real power lay, to beg for an investigation.²⁴¹

Grand juries were not afraid to ruffle feathers. One issued a report chastising judges for becoming too lazy in their seniority. It observed, “the longer the Judges serve on the bench the greater time they require for rest.”²⁴² That same report had sharp words for the district attorney's office, offering unsolicited advice about its budget and staffing choices.²⁴³

By 1906, corporate and public grifters were already unanimous in their hatred for the venerable institution. One local observed, “[n]othing is more terrific to the boodlers than a grand jury broke loose.”²⁴⁴ An editorial wrote, “[t]he Grand Jury has always been disliked by politicians. It is the only body charged with investigating public offices, and the only part of the prosecuting machinery that does not have to go before a political convention.”²⁴⁵ In light of this fact, the legislature tried to abolish the grand jury in 1902, but the people overwhelmingly came out to support

²³³ *Probing for Corruption*, S.F. CHRON., at 6, (Nov. 15, 1906),

<https://www.newspapers.com/image/27369284/> [<https://perma.cc/8RRY-GB9F>].

²³⁴ *Bay City Shame Told to the Jury*, L.A. TIMES, at 1, (Dec. 1, 1906),

<https://www.newspapers.com/image/380230989> [<https://perma.cc/R3WJ-QETV>].

²³⁵ NOLTE, *supra* note 219.

²³⁶ *Id.*

²³⁷ Will Scarlet, *San Francisco's Passion Play*, 54 OVERLAND MONTHLY 497, 497 (1909).

²³⁸ Vitiello & Kelso, *supra* note 222, at 519.

²³⁹ *Id.* at 520-21.

²⁴⁰ *More Charges of Graft Made by Mayor M'Aleer*, S.F. EXAMINER, at 6, (Jan. 1, 1906),

<https://www.newspapers.com/image/457505187> [<https://perma.cc/3SXX-M4H5>].

²⁴¹ *Curtis Is Unable to Find an Accuser*, S.F. CHRON., at 9, (Jan. 17, 1906),

<https://www.newspapers.com/image/27444658> [<https://perma.cc/7YYL-KPEH>].

²⁴² *Rebuke for Police Judges*, S.F. CHRON., at 9, (Mar. 30, 1906),

<https://www.newspapers.com/image/27475837> [<https://perma.cc/99FV-T8AC>].

²⁴³ *Id.*

²⁴⁴ YOUNGER, *supra* note 20, at 245.

²⁴⁵ *Trying to Destroy the Grand Jury*, S.F. EXAMINER, at 16, (Mar. 9, 1907),

<https://www.newspapers.com/image/457933576/> [<https://perma.cc/NQ4G-8F2P>].

it.²⁴⁶ After that failed, judges started to invalidate grand jury indictments.²⁴⁷

The Phony Grand Jury: April – October 1906

By law, the twelve superior court judges of San Francisco were required to meet on the eighth of January to select a presiding judge.²⁴⁸ The presiding judge's primary power was the ability to assign cases among the superior court, usually reserving for himself the easiest ones and those that would generate the most press coverage.²⁴⁹ But the presiding judge had another power: overseeing the selection of grand jurors.²⁵⁰ Each judge would put forth twelve names, for a total of 144, from which the presiding judge would draw.²⁵¹ Grand juries met at City Hall, broken down into committees, with the foreman having his own office.²⁵²

With a grand jury on the horizon, Ruef was keeping a close eye on it, but not yet worried. Many of the names submitted, after all, were his allies.²⁵³ And two of the judges providing names were in his pocket.²⁵⁴

The first grand jury of 1906 was empaneled on April 3.²⁵⁵ Two-thirds were either Ruef partisans or sympathizers, including its foreman.²⁵⁶ Upon learning that the grand jury would be impotent, there was "a general rejoicing throughout the tenderloin" and criminals began to "strut like overfed turkeys."²⁵⁷

A couple of weeks later, a calamitous earthquake devastated San Francisco.²⁵⁸ A New York paper pronounced the city dead.²⁵⁹ With the city in disarray, court would be held in a synagogue: the Temple Sherith Israel.²⁶⁰ The grand jury passed a resolution praising Mayor Schmitz for his leadership during the crisis.²⁶¹ It would be the last positive press Schmitz would get from a grand jury.

Unbeknownst to the city, however, a covert investigation had begun. In January 1906, as the phony grand jury was being drawn up, five men concocted a plan to

²⁴⁶ *Id.*

²⁴⁷ *See id.*

²⁴⁸ *Graham Likely to Preside over Judges*, S.F. EXAMINER, at 5, (Jan. 4, 1906), <https://www.newspapers.com/image/457510963> [<https://perma.cc/CKX7-7UXC>].

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Names for Grand Juries Selected by Court*, S.F. CALL, at 7, (Jan. 31, 1906), <https://www.newspapers.com/image/87813860> [<https://perma.cc/HNL7-H6E3>].

²⁵² *Curtis Makes Demand for an Inquiry*, S.F. CALL, at 7, (Jan. 17, 1906), <https://www.newspapers.com/image/87809000> [<https://perma.cc/4RYS-5PG7>].

²⁵³ *What's Said in San Francisco*, L.A. TIMES, at 20, (Feb. 17, 1906), <https://www.newspapers.com/image/380197851/> [<https://perma.cc/5UXR-FGCN>].

²⁵⁴ *Id.*

²⁵⁵ *Fireworks in Grand Jury Probable*, S.F. EXAMINER, at 10, (Apr. 4, 1906), <https://www.newspapers.com/image/458173141> [<https://perma.cc/FUW6-GWTQ>].

²⁵⁶ *Rioting of Anarchists*, L.A. TIMES, at 8, (Apr. 15, 1906), <https://www.newspapers.com/image/380140702> [<https://perma.cc/8JPT-JSZ8>].

²⁵⁷ *Id.*

²⁵⁸ Nolte, *supra* note 219.

²⁵⁹ *Id.*

²⁶⁰ *Witness Tells of Graft by Crooks of the Administration*, S.F. EXAMINER, at 2, (Nov. 10, 1906), <https://www.newspapers.com/image/457940779> [<https://perma.cc/42PT-LPZS>].

²⁶¹ *Praise from Grand Jury*, S.F. CHRON., at 8, (May 8, 1906), <https://www.newspapers.com/image/27439309> [<https://perma.cc/NCB7-U9RQ>].

destroy the Ruef machine: financier Rudolph Spreckels, former Mayor James Phelan, newspaper editor Fremont Older, prosecutor Francis Heney, and Secret Service detective William Burns.²⁶² Spreckels and Phelan were good government reformers who had long crossed swords with the railroads.²⁶³ They would provide independent funding for the investigation.²⁶⁴ Older could ensure press coverage, while Heney and Burns could start up the investigation.²⁶⁵ Starting March 1, Heney and Burns went about gathering evidence of graft.²⁶⁶ Heney worked without pay and said he was willing to devote a year to the investigation.²⁶⁷

In October, District Attorney William Langdon gave this investigation official sanction by naming Heney a special District Attorney.²⁶⁸ The bigger breakthrough, however, was the coming opportunity for a new grand jury to be drawn. The roll of potential grand jurors was professionally diverse. It featured liquor wholesalers, a retiree, a real estate dealer, a baker, a boat builder, a plumber, a cashier, an insurance agent, an art dealer, a government staffer, and a hatter.²⁶⁹ This time, there was a shot at an impartial body.

Fearing this, Schmitz hastened his departure for a European sojourn, and John P. Gallagher, president of county supervisors, became acting mayor.²⁷⁰ Not one to give up power so easily, Ruef hatched an audacious plot.

Ruef had Langdon suspended from office and himself appointed district attorney. His first act as DA was the removal of special prosecutor Heney. He then announced he would take over the investigation against himself and curate the grand jury selection. In so doing, he planned to hijack the investigation and use the inquest to investigate Heney and Burns. After the coup, Ruef held a soiree at one of the city's most fashionable cafes and his cronies toasted to his brilliance.

The next morning, Gallagher went before the Board of County Supervisors and said Langdon had been relieved for "conspiracy to defame the good name of Mayor Schmitz."²⁷¹ He would later add that Langdon conspired with German insurance companies—who owed San Franciscans money after the earthquake—to besmirch Schmitz.²⁷² Addressing the press on the matter, Ruef "spoke excitedly, gesticulated wildly, raised his voice almost to a scream. His eyes, reddened as those of Kipling's

²⁶² Kamiya, *supra* note 232.

²⁶³ *Prepares to Fight Overhead Trolley on Sutter Street*, S.F. CALL, at 1, (Mar. 23, 1906), <https://www.newspapers.com/image/80921566> [<https://perma.cc/LH8Y-V5JT>].

²⁶⁴ Kamiya, *supra* note 232.

²⁶⁵ *Id.*

²⁶⁶ *Heney and Burns Say Case Is Complete*, S.F. CHRON., at 1, (Oct. 22, 1906), <https://www.newspapers.com/image/27544745> [<https://perma.cc/NS78-PT9R>].

²⁶⁷ *Grand Jury to Begin Work this Morning*, S.F. CHRON., at 2, (Nov. 14, 1906), <https://www.newspapers.com/image/27368612> [<https://perma.cc/S6N7-893P>].

²⁶⁸ *The Prosecution Is to Be Conducted by Francis J. Heney*, OAKLAND TRIB., at 9, (Oct. 21, 1906), <https://www.newspapers.com/image/76531238> [<https://perma.cc/U4TG-APTC>].

²⁶⁹ *Draw Ruef Men for Grand Juror*, S.F. EXAMINER, at 31, (Oct. 28, 1906), <https://www.newspapers.com/image/458002315> [<https://perma.cc/SKS6-V9GW>].

²⁷⁰ *Grand Jury to Hear Charges Made*, OAKLAND TRIB., at 1, (Oct. 23, 1906), <https://www.newspapers.com/image/76531888> [<https://perma.cc/78LK-KBDN>].

²⁷¹ *Id.* at 2.

²⁷² *Administration Answers by Making Charges*, S.F. CALL, at 2, (Oct. 26, 1906), <https://www.newspapers.com/image/80979996> [<https://perma.cc/XRL7-2KHT>].

mongoose, flashed as he talked.”²⁷³

Legally, the plan was nonsensical. Langdon was a county official, but Ruef had used the powers of the office of mayor to remove him. The city charter gave him no power to remove a county official.²⁷⁴ Langdon promptly got a restraining order against Ruef from proceeding in the coup.²⁷⁵ Even so, it set up a Pope-Antipope power struggle between Heney and Ruef. When grand jury selection began, both men showed up to court claiming to be the legitimate district attorney. The judge refused to say who it would name as the true DA and allowed both of them to participate.²⁷⁶

Though the public wholeheartedly supported the investigation, Ruef had supporters of his own. He packed the courtroom with obsequious ruffians who applauded whenever he insulted the prosecutors.²⁷⁷ Ruef also requested that the courtroom be closed during grand jury selection, a procedural move with dual benefits: hiding his conduct from the general public and setting up a future claim to have the grand jury invalidated for being drawn in secret.²⁷⁸ Fed up after several days of battle, Heney said that Ruef was either trying to stack the deck in his favor or lay the groundwork for later challenges to the validity of the body.²⁷⁹ This statement was prophetic, as Ruef’s attorneys would go on to argue that the grand jury was biased from the start.²⁸⁰

The Oliver Grand Jury: November 1906 – May 1907

After much wrangling, the grand jury was assembled on November 8.²⁸¹ Called “the most important inquisitorial body ever summoned by the courts of San Francisco,”²⁸² it is understandable that Judge Graham’s charges to the jury took on an elevated tone. He told them to act without fear, favor, or affection and extolled the value of their mission. “There is no higher duty devolving on a citizen,” he intoned “than his jury duty; this is one of the highest and most important duties of

²⁷³ *Boss Ruef at Bay Removes Langdon*, S.F. CALL, at 2, (Oct. 26, 1906),

<https://www.newspapers.com/image/80979972> [<https://perma.cc/VEW8-EP6B>].

²⁷⁴ Gaviv McNab, “*Supreme Court Will Grant Writ Disposing of Farce*”-McNab, at 1, S.F. CALL (Oct. 26, 1906), <https://www.newspapers.com/image/80979972> [<https://perma.cc/5YZE-BYVM>].

²⁷⁵ *Ruef has Been Restrained by Court Order*, EVENING SENTINEL, at 1, (Oct. 27, 1906),

<https://www.newspapers.com/image/51363356> [<https://perma.cc/RG87-QWBE>].

²⁷⁶ *Vanity Led Ruef to Humiliating Defeat*, L.A. TIMES, at 1, (Oct. 28, 1906),

<https://www.newspapers.com/image/380217835> [<https://perma.cc/23U8-TYT2>].

²⁷⁷ *Ruef Terrorizes the Court with Gang*, S.F. CALL, at 1, (Oct. 27, 1906),

<https://www.newspapers.com/image/46497789> [<https://perma.cc/4E7M-HTB2>].

²⁷⁸ *Judge Graham Will Decide on Monday*, S.F. CHRON., at 1, (Oct. 27, 1906),

<https://www.newspapers.com/image/27547152> [<https://perma.cc/4SN3-JWR4>].

²⁷⁹ *Why Does Ruef Oppose the Challenge?*, S.F. EXAMINER, at 2, (Nov. 2, 1906),

<https://www.newspapers.com/image/457915699> [<https://perma.cc/3RMC-EVFA>].

²⁸⁰ *Untitled*, S.F. CALL, at 8, (Jan. 31, 1907), <https://www.newspapers.com/image/87803499> [<https://perma.cc/678M-B2HG>].

²⁸¹ *New Grand Jury Ready to Begin Its Work*, S.F. CALL, at 7, (Nov. 8, 1906),

<https://www.newspapers.com/image/80980780> [<https://perma.cc/9S7S-U6A4>].

²⁸² George A. Van Smith, *Foreman Oliver Promises to Protect Witnesses Who Give Jury Proof of Grafters’ Doings*, S.F. CALL, at 41, (Nov. 11, 1906), <https://www.newspapers.com/image/80980981> [<https://perma.cc/2FAM-XCLD>].

good citizenship.”²⁸³ The institution of the grand jury was lauded as “a most ancient and important factor in our legal and civic life . . . Upon it the community depends for legal, honest and disinterested investigation.”²⁸⁴

The judge appointed Bartholomew Patrick Oliver as the foreman. Trained in real estate and uninterested in politics, he came to the job with the support of good government reformers.²⁸⁵ The courtroom buzzed with approval when his name was announced.²⁸⁶ Ruef very nearly broke down when he learned Oliver was appointed foreman.²⁸⁷

As the grand jury hunkered down, Ruef lawyered up.²⁸⁸ His attorneys posted up outside the grand jury room to report on their movements, and started lodging technical objections against the inquest immediately.²⁸⁹ Despite “browbeating them with less consideration than a public prosecutor would show to an indicted pickpocket,”²⁹⁰ the legal team never managed to show any bias by the jurors,²⁹¹ and courts refused to invalidate the grand jury.²⁹² Ruef, meanwhile, searched for “[e]very possible avenue of influence” over the jurors.²⁹³ As the investigation wore on, Ruef became gaunter by the day.²⁹⁴

Foreman Oliver mulled holding the grand jury meetings in secret locations to avoid Ruef’s legions of spies.²⁹⁵ So firm was Ruef’s control of the police department that the grand jury would not use police to carry out ministerial tasks like delivering subpoenas, as was custom.²⁹⁶ It also refrained from having any police officers present at its meeting place, appointing its own sergeant-at-arms to guard the proceedings.²⁹⁷

The matter was complicated by the fact that the synagogue where the grand jury was impaneled had no space for a grand jury room, all of the rooms being occupied for court purposes.²⁹⁸ It finally settled in at the Native Sons hall on the corner of

²⁸³ *New Grand Jury Ready to Begin Its Work*, *supra* note 281, at 7.

²⁸⁴ *Id.*; *Strong Charge Is Given Grand Jury*, S.F. CHRON., at 1, (Nov. 10, 1906), <https://www.newspapers.com/image/27364862> [<https://perma.cc/9L49-DGZV>].

²⁸⁵ *Strong Charge Is Given Grand Jury*, *supra* note 284, at 1.

²⁸⁶ *Judge Graham Charges New Grand Jury*, S.F. CALL, at 2, (Nov. 10, 1906), <https://www.newspapers.com/image/80980857> [<https://perma.cc/S6HE-HP7J>].

²⁸⁷ *Speedy Action by the Grand Jury Expected*, S.F. CHRON., at 34, (Nov. 11, 1906), <https://www.newspapers.com/image/27366528> [<https://perma.cc/SA54-7VU4>].

²⁸⁸ *See Strong Charge Is Given Grand Jury*, *supra* note 284.

²⁸⁹ *See id.*

²⁹⁰ *Try the Criminals, Not the Grand Jurors*, S.F. EXAMINER, at 16, (Dec. 11, 1906), <https://www.newspapers.com/image/458005131> [<https://perma.cc/SRZ4-AVUV>].

²⁹¹ *See All Jurors Prove that They Have No Bias*, S.F. CALL, at 2, (Dec. 8, 1906), <https://www.newspapers.com/image/80982499> [<https://perma.cc/FRM8-TEXH>].

²⁹² *See Halsey v. Superior Court of S.F.*, 91 P. 987, 991 (Cal. 1907).

²⁹³ *Grand Jury to Hear Charges Against Ruef at Once, O’Neil or Walsh Not to Be Given Subpoenas to Serve*, S.F. CALL, at 30, (Nov. 11, 1906), <https://www.newspapers.com/image/80980946> [<https://perma.cc/3S27-B67C>].

²⁹⁴ *Speedy Action by the Grand Jury Expected*, *supra* note 288.

²⁹⁵ *Grand Jury to Hear Charges Against Ruef at Once*, *supra* note 270, at 29.

²⁹⁶ *Id.*

²⁹⁷ *Graft in French Restaurants Is Inquiry*, S.F. CHRON., at 1, (Nov. 15, 1906), <https://www.newspapers.com/image/27369127> [<https://perma.cc/C3BK-UQNK>].

²⁹⁸ *Speedy Action by the Grand Jury Expected*, *supra* note 288.

Gough and Geary streets.²⁹⁹

Logistical concerns resolved; the grand jury moved quickly. Less than a week after forming, word leaked that indictments against Schmitz and Ruef were imminent.³⁰⁰ The body had an impressive menu of graft to choose from. It seemed as though every business owner in the city had a different tale of how they were soaked. A police captain claimed Ruef demanded a twenty-five percent share of a business in order for it to receive police protection.³⁰¹ Another business had to give a thirty percent share.³⁰² Liquor dealers had to take out insurance with companies Ruef represented.³⁰³ Witnesses explained that Ruef demanded tribute from prostitution houses, anywhere from \$1100 to \$2500.³⁰⁴ Several other “French restaurants”—a euphemism for prostitution houses—had to hire Ruef as their attorney. They paid a hefty retainer for his services but seldom called on him for counsel.³⁰⁵

Allegations swirled that railroad and telephone companies bribed the county supervisors to obtain franchises, the police force was in league with criminals, election fraud was rampant, and Ruef enabled French restaurants. Isidor Jacobs, the first witness, explained how he witnessed vote-rigging in recent judicial elections in favor of Ruef’s preferred candidates.³⁰⁶ Other ballot box stuffers were employed to ensure Ruef controlled the results of the San Francisco County Republican convention.³⁰⁷

Even though Heney and Langdon were strong personalities, the grand jury maintained its independence. When considering indictments proposed by the prosecutors, the jury deliberated long after they left the room, and called them back in multiple times to answer questions.³⁰⁸ Prosecutors would, at times, openly break with pronouncements of grand jurors.³⁰⁹ Grand jurors also protested against the prosecutors’ tendency to award immunity to corrupt officials.³¹⁰

In November, Ruef and Schmitz were indicted for extorting money from French

²⁹⁹ *Grand Jury to Begin Work This Morning*, S.F. CHRON., at 1, (Nov. 14, 1906), <https://www.newspapers.com/image/27368589> [<https://perma.cc/VX9Z-CJYP>].

³⁰⁰ *See Langdon Proposes to Indict Schmitz and Ruef Within Five Days*, S.F. EXAMINER, at 13, (Nov. 11, 1906), <https://www.newspapers.com/image/457944029> [<https://perma.cc/WC7X-EF9M>].

³⁰¹ *Declare Ruef Held Up the Belvedere*, S.F. EXAMINER, at 1, (Nov. 12, 1906), <https://www.newspapers.com/image/457948077> [<https://perma.cc/V7ZA-52WB>].

³⁰² *Wanted 30 Percent to Open Theater and Restaurant*, S.F. EXAMINER, at 1, (Dec. 5, 1906), <https://www.newspapers.com/image/457991997> [<https://perma.cc/7QUU-22XR>].

³⁰³ *See No Guilty Man Can Escape—Says Burns*, S.F. EXAMINER, at 2, (Nov. 19, 1906), <https://www.newspapers.com/image/457960714> [<https://perma.cc/6WTZ-3YC8>].

³⁰⁴ *Grand Jury Will Begin Its Big Work Today*, S.F. CALL, at 1-2, (Nov. 14, 1906), <https://www.newspapers.com/image/80981146> [<https://perma.cc/S9ZP-B77J>].

³⁰⁵ *Graft in French Restaurant Is Inquiry*, S.F. CHRON., at 2, (Nov. 15, 1906), <https://www.newspapers.com/image/27369166> [<https://perma.cc/ANA9-CBJW>].

³⁰⁶ *Witness Tells of Graft by Crooks of the Administration*, S.F. EXAMINER, at 1, (Nov. 10, 1906), <https://www.newspapers.com/image/457940697> [<https://perma.cc/2DJ3-5YG2>].

³⁰⁷ *Stuffers Are Pardoned*, L.A. TIMES, at 11, (Dec. 1, 1906), <https://www.newspapers.com/image/380230989> [<https://perma.cc/GKJ7-U7YS>].

³⁰⁸ *Graft in French Restaurant Is Inquiry*, *supra* note 306, at 1.

³⁰⁹ *Sonntag’s Move Against Dinan Is Repudiated*, S.F. CALL, at 1, (June 28, 1907), <https://www.newspapers.com/image/87844351> [<https://perma.cc/X72F-VAC7>].

³¹⁰ *Jurors Rebel at Immunity Bath System*, S.F. EXAMINER, at 1, (Aug. 21, 1907), <https://www.newspapers.com/image/458049690> [<https://perma.cc/6C3C-FZMA>].

restaurant owners. With promises of more indictments on the horizon, boodlers fled in terror. Many of them ran directly into the prosecutor's office to tell everything they knew.³¹¹

Myrtle Cerf was an early turncoat. A trusted agent of Schmitz and Ruef, he confessed before the grand jury about graft schemes within the administration.³¹² This was later confirmed by a parade of witnesses who flipped. There was Edward Graney, a prolific man with experience as a blacksmith, politician, and boxing referee, among several other professions.³¹³ More to the point, he was a stockholder and director of the Belvedere Music Hall, which Ruef had coerced into giving him a one-quarter share.³¹⁴ Colonel Herbert Choynski was a failure as a politician, but a sterling lawyer and soldier. Comfortable in front of cameras, he braved a gaggle of reporters to tell the grand jury about the Belvedere scam.³¹⁵ The only one to deny knowledge of any graft was John Ross, a 300-pound horse auctioneer, debt collector, and personal bodyguard to Ruef.³¹⁶

Industry after industry had an ax to grind with the administration. Saloonkeepers told of how they had to buy their liquor licenses directly from Ruef.³¹⁷ Fire commissioner H.M. Wreden was suspected of using his position to force bars to use his own homebrew. One barkeep had a two-year contract with Pabst Brewing Company but was told he had to switch to the commissioner's Claus Wreden Brewing Company.³¹⁸ Vaudeville managers said that unless they paid up, they would not be allowed to hold performances.³¹⁹ Another witness testified that Schmitz and Ruef had ties to the "the municipal crib," a massive brothel with 150 rooms and a daily revenue of \$800, along with several alumni of the Blind Buckley administration.³²⁰

Prosecutors expected as many as fifty government officials—including all eighteen county supervisors—would be caught up when all was said and done. And with good reason. It seemed like every county supervisor was either accused of taking a bribe or refused to discuss whether they accepted bribes.³²¹

Their reticence was justified. Deep into the investigation, the grand jury

³¹¹ *No Guilty Man Can Escape—Says Burns*, *supra* note 280, at 2.

³¹² *Got a \$26 Bribe on a Contract for 12 Roll-Top Desks*, S.F. EXAMINER, at 2, (Nov. 17, 1906), <https://www.newspapers.com/image/457953893> [<https://perma.cc/NME8-REEQ>].

³¹³ *Graney Tells about Ruef's Belvedere Graft*, S.F. CHRON., at 2, (Nov. 22, 1906), <https://www.newspapers.com/image/27374011> [<https://perma.cc/DZ5J-4QUF>].

³¹⁴ *Id.* at 1.

³¹⁵ *Id.*

³¹⁶ *Graney Tells About Ruef's Belvedere Graft*, *supra* note 313, at 1.

³¹⁷ *Mayor and Boss to Face Other Indictments*, S.F. CALL, at 29, (Nov. 25, 1906), <https://www.newspapers.com/image/80981845> [<https://perma.cc/DP9H-LT6P>].

³¹⁸ *Burns Now After H.M. Wreden*, S.F. EXAMINER, at 1, (Dec. 7, 1906), <https://www.newspapers.com/image/457994715/> [<https://perma.cc/6BM6-VFYJ>].

³¹⁹ *Loverich First Manager to Confess*, S.F. EXAMINER, at 15, (Dec. 9, 1906), <https://www.newspapers.com/image/457998264> [<https://perma.cc/FA69-Y3ZS>].

³²⁰ *Andrieu Gives Out Damaging Secrets*, L.A. TIMES, at 2, (Nov. 23, 1906), <https://www.newspapers.com/image/380256975> [<https://perma.cc/6XBU-GKTJ>].

³²¹ *Got a \$26 Bribe on a Contract*, *supra* note 313, at 2; *Horse Talk Is Lonergan's Bete Noir*, S.F. EXAMINER, at 2, (Nov. 19, 1906), <https://www.newspapers.com/image/457960783>

[<https://perma.cc/SGGP-KNHB>]; *Supervisors on the Hunt for Cover*, S.F. EXAMINER, at 2, (Nov. 19, 1906), <https://www.newspapers.com/image/457960783> [<https://perma.cc/5GGP-KNHB>].

discovered the massive scope of the bribery. All told, big businesses paid out one million dollars in bribes to city officials.³²² Virtually every bribe could be directly linked to a favorable vote or a contract with the supervisors.³²³

Confronted with this evidence, the Board of Supervisors sang like canaries before the grand jury.³²⁴ Jurors listened with their “eyes dilated and mouths agape” as the supervisors breezily admitted to felonies.³²⁵ They were given immunity for their testimony because it was the big corporations who made the bribes that prosecutors were truly after.³²⁶

Indictments flowed like water. In addition to the supervisors, several witnesses were nailed for perjury, with everyone from the chief of police to an elevator operator caught up.³²⁷ Supervisor Nicholas was charged with accepting bribes.³²⁸ By the end of March 1907, indictments were returned against bribe-givers, not just bribe-takers. A baker’s dozen of corporate executives were indicted.³²⁹ Ruef took the cake with 79 indictments against him.³³⁰

As a precaution, Ruef was placed under guard at the St. Francis Hotel.³³¹ He spent his days taking strolls, reading Kipling, and perusing foreign newspapers.³³² With a dearth of available substantive arguments showing his innocence, Ruef had to bank on technicalities. His attorney kicked things off by issuing a “blanket objection to everything that the court would do,” and asked that a “continuous objection should apply to all proceedings in the future.”³³³ Defense attorneys fought the matter all the way up to the state supreme court and lost.³³⁴ Once all of the defense objections floundered, Ruef’s attorneys resigned themselves for the grim prospect of trial on his many felony charges.³³⁵

³²² *Graft More than Million Dollars*, S.F. CALL, at 5, (Mar. 19, 1907),

<https://www.newspapers.com/image/87820698> [<https://perma.cc/CN9P-JPN6>].

³²³ *Id.*

³²⁴ *Revealed Ruef Now Plans Revelation*, L.A. TIMES, at 1, (Mar. 20, 1907),

<https://www.newspapers.com/image/379982611> [<https://perma.cc/2HUP-YS35>].

³²⁵ *Supervisors Bask in Pledges of Immunity*, S.F. CHRON., at 2, (Mar. 20, 1907),

<https://www.newspapers.com/image/27425364> [<https://perma.cc/47Q7-NDQ8>].

³²⁶ *See id.*

³²⁷ *See Brief Respite for Nicholas and Duffy*, S.F. EXAMINER, at 2, (Dec. 1, 1906),

<https://www.newspapers.com/image/457980198> [<https://perma.cc/LG3X-K39P>]; *Grand Jury Brands*

Dinan a Perjurer, S.F. EXAMINER, at 2, (Dec. 1, 1906), <https://www.newspapers.com/image/457980198>

[<https://perma.cc/LG3X-K39P>]; *Loupy and Adler Are Thought to Be Indicted*, S.F. CHRON., at 29, (Nov.

18, 1906), <https://www.newspapers.com/image/27371368> [<https://perma.cc/Z2EQ-FL34>].

³²⁸ *Brief Respite for Nicholas and Duffy*, *supra* note 327, at 2.

³²⁹ *Effect of Supreme Court Decision*, S.F. CALL, at 2, (Sept. 24, 1907),

<https://www.newspapers.com/image/87851642> [<https://perma.cc/Y887-JR3F>].

³³⁰ *Id.*

³³¹ *Grafters Are Getting Busy*, L.A. TIMES, at 3, (Mar. 10, 1907),

<https://www.newspapers.com/image/379973395> [<https://perma.cc/C3TK-7APG>].

³³² *Ruef Silent on Politics*, S.F. CHRON., at 1, (Apr. 8, 1907),

<https://www.newspapers.com/image/27387212> [<https://perma.cc/DW8S-P9DM>].

³³³ *Heney to Anticipate Ruef at Washington*, S.F. CALL, at 5, (Mar. 13, 1907),

<https://www.newspapers.com/image/87819386> [<https://perma.cc/E883-Q98G>].

³³⁴ *Schmitz Must Be Tried, Says Supreme Court*, S.F. EXAMINER, at 1, (Mar. 15, 1907),

<https://www.newspapers.com/image/457945050/> [<https://perma.cc/6MDQ-HHGG>].

³³⁵ *Trial Today Seems Sure*, L.A. TIMES, at 14, (Mar. 13, 1907),

<https://www.newspapers.com/image/379977090> [<https://perma.cc/3XJE-2YEB>].

Rather than risk a loss at trial, Ruef decided to plead guilty on May 15, 1907.³³⁶ Around that time, the grand jury was wrapping up its investigation.³³⁷ Abandoned by the supervisors, Schmitz offered to confess as well, but it was too late. There was already more than enough evidence against him.³³⁸ He later was forced out of office, but still tried to run for re-election.³³⁹

Running the City: March – December 1907

With all major city officials under the cloud of indictment, and the graft largely uncovered, the grand jury took up its next major task: running the city. Papers mused that the grand jury “may become a sort of political county committee with a new leader in control” that would assume executive, legislative, and judicial power.³⁴⁰ Indeed, it did.

The supervisors, under threat of having further charges pressed against them, rescinded corrupt contracts with the railroads and other utilities.³⁴¹ Though they still cast votes, they had to submit policies to the grand jury for approval. Before long, the board selected a new reform mayor, Dr. Edward Robeson Taylor, and then prepared to resign once he selected new supervisors.³⁴² He also mucked out the board of police commissioners.³⁴³ The new board immediately pledged to clean up the city that had been so long neglected.³⁴⁴

Before the new mayor was picked, the inquest was the one drawing up budgets for the city, setting its tax rate, and planning bond elections. For example, it decided to raise taxes from twenty to twenty-five percent to finance an infrastructure project, a pay bump for teachers, and an increase in school funding.³⁴⁵

At the same time, the body poured over the city payroll list with an eye towards cutting bloated salaries. It was well-known by then that Ruef and Schmitz had doled out pay raises to their favorite cronies in city government. The grand jury planned to cut public salaries by ten to twenty percent in order to pay for its city improvement

³³⁶ *Ruef Turns Great White Light on Prosecution's Dark Secrets*, OAKLAND TRIB., at 13, (Mar. 8, 1908), <https://www.newspapers.com/image/76564925> [<https://perma.cc/EEF8-2JJA>].

³³⁷ *Work of the Grand Jury Is Nearly Finished*, S.F. CALL, at 2, (May 20, 1907), <https://www.newspapers.com/image/87837328> [<https://perma.cc/9VG2-3EGY>].

³³⁸ *Mayor Schmitz Offers Confession for Promise of Immunity, Thirteen Indictments Voted Against Abram K. Detwiler*, S.F. CALL, at 1, (Mar. 23, 1907), <https://www.newspapers.com/image/87821509> [<https://perma.cc/CR6Y-BLH9>].

³³⁹ *Convict Chief Plans Campaign for Re-Election*, S.F. CALL, at 1, (July 3, 1907), <https://www.newspapers.com/image/87845095> [<https://perma.cc/9W62-88RB>].

³⁴⁰ *“Big Stick” as Factor in Municipal Control*, S.F. CHRON., at 1, (Mar. 22, 1907), <https://www.newspapers.com/image/27426302> [<https://perma.cc/4DJW-QFQK>].

³⁴¹ *Id.*

³⁴² *Pledge of Prosecutors Is Fulfilled Through Action of Supervisors*, S.F. CALL, at 1, (July 17, 1907), <https://www.newspapers.com/image/87846575> [<https://perma.cc/FF5L-69WS>].

³⁴³ *Taylor Begins with Ousting Police Board*, S.F. CALL, at 1, (Aug. 21, 1907), <https://www.newspapers.com/image/87849190> [<https://perma.cc/6TK2-GCFY>].

³⁴⁴ *Open War on Vice*, L.A. TIMES, at 1, (Aug. 25, 1907), <https://www.newspapers.com/image/380044584> [<https://perma.cc/HG94-NJLQ>].

³⁴⁵ *Budget Pass by Grand Jury*, S.F. CHRON., at 16, (May 25, 1907), <https://www.newspapers.com/image/27352060> [<https://perma.cc/V6DM-H8Q7>].

fund.³⁴⁶

The grand jury all but took over for the board of public works. When city waterways fell into disarray, the grand jury directed not only that they be cleaned up, but dictated the schedule for how it should be done.³⁴⁷ If buildings were shoddily constructed, it was the grand jury, not the board, that gave the order to close it.³⁴⁸

There was much work to be done on this front. Mayor Schmitz and his lackeys on the Board of Public Works had long permitted public theaters to operate in flagrant violation of building codes.³⁴⁹ Dubbed “deathtraps” or “firetraps” by the press, these buildings posed a clear and present danger to the public.³⁵⁰

The grand jury promptly told the operators to fix themselves up or be shut down. It also told the Board to hire more inspectors to prevent future infractions,³⁵¹ and ordered the Board secretary to prepare a report on the matter.³⁵² When the grand jury writ large was out of session, and thus did not have formal meetings, individual jurors stayed hard at work on the issue, pouring over data and holding meetings with relevant officials.³⁵³

After considering the breadth of the problem, the grand jury even planned to indict Board officials for conspiracy to break the law.³⁵⁴ No sooner had the inquest raised the ax than the Board started boarding up noncompliant theaters. In addition to chewing out the Board for lax enforcement, the grand jury probed how the Board gave special treatment to favored contractors.³⁵⁵ Board President George Duffey eventually admitted he was violating the law.³⁵⁶ Later, it was revealed that the noncompliant buildings had pooled their resources to hire Ruef as their attorney before the Board and county supervisors.³⁵⁷

Busy schedule notwithstanding, the grand jury made time to take United Railroads to task. Outraged by the poor service provided to the public, the body called in the company to hear every complaint filed against it. In response, company men assured the grand jury they were working unceasingly and spending generously to improve conditions. By the end of the meeting, the company had agreed to a plan to reduce the number of last-minute route cancellations and increase the number of

³⁴⁶ *High Salaries of City Employees Will Be Cut*, S.F. CALL, at 44, (May 26, 1907), <https://www.newspapers.com/image/49757507> [<https://perma.cc/5R84-Y557>].

³⁴⁷ *May Close Each Street in Turn*, S.F. CALL, at 7, (Feb. 5, 1907), <https://www.newspapers.com/image/87806498> [<https://perma.cc/8HXY-VFGR>].

³⁴⁸ *See Globe Theatre Closed by Grand Jury's Order*, S.F. EXAMINER, at 8, (May 30, 1907), <https://www.newspapers.com/image/457939315> [<https://perma.cc/9FTQ-J7WE>].

³⁴⁹ *Grand Jury Is After Deathtrap Theaters*, S.F. CALL, at 5, (Feb. 19, 1907), <https://www.newspapers.com/image/87811454> [<https://perma.cc/H3SY-JJME>].

³⁵⁰ *See id.*

³⁵¹ *Id.*

³⁵² *Works Board Sponsor for the Firetraps*, S.F. CALL, at 16, (Feb. 21, 1907), <https://www.newspapers.com/image/87811754/> [<https://perma.cc/7F8L-UDKR>].

³⁵³ *Would Stop a Public Menace*, S.F. CHRON., at 64, (Sept. 22, 1907), <https://www.newspapers.com/image/27504364> [<https://perma.cc/Y6XB-DCM4>].

³⁵⁴ *Works Board Sponsor for the Firetraps*, *supra* note 352, at 16.

³⁵⁵ *Id.*

³⁵⁶ *Duffy Admits He Is Violating the Laws*, S.F. CALL, at 2, (Feb. 23, 1907), <https://www.newspapers.com/image/458022672> [<https://perma.cc/5AMW-MB4R>].

³⁵⁷ *Judge Dunne Will Set Date for Ruef's Trial*, S.F. CALL, at 12, (Feb. 25, 1907), <https://www.newspapers.com/image/87812427> [<https://perma.cc/AEJ4-YRV3>].

inspectors. The company also issued a public mea culpa for having “bitten off more than it could chew” by laying down more tracks than it could properly manage.³⁵⁸ Within a couple of weeks, the company announced that the extra staff had been hired, and the grand jury secured additional promises from the company that it would speedily deploy new trains.³⁵⁹

The grand jury did not stop there. Grand juror Charles Sonntag, chair of the committee on police and enforcement of the law, announced that United Railroads could be held criminally liable for the death of passengers. And the grand jury was not interested in lower level staffers, either. It was the owners and managers of the company who would face manslaughter charges. Moreover, the company could lose its license for overhead trolleys if it did not meet public safety requirements—an economic death penalty.³⁶⁰

Still smarting over the railroads’ skullduggery in buying off politicians, the grand jury sought to even the score. It unveiled a plan to force the railroads to pay the city a greater sum for its monopoly over public transportation.³⁶¹ Top railroad executives would later be indicted for graft, too.³⁶²

If the grand jury felt right at home bossing around one of the largest corporations in the city, it was just as comfortable issuing orders to the police. It told the police force to assist the railroads in keeping stations clear and orderly.³⁶³ And it hauled in the Board of Police Commissioners to tell them they must start actually enforcing the law, clean up the city, and get a new chief—all while the incumbent chief sat listening. The Board hastened to comply.³⁶⁴

There was good reason for such urgency. A report issued by the grand jury explained how the grand jury had first told the police to crack down on houses of ill repute, and the police had done little to nothing.³⁶⁵ If anything, the vice industry had expanded, and a canvass found roughly three dozen such houses, including some along routes that children took to school.³⁶⁶

With the grand jury in command, the police started closing down the offending establishments in droves.³⁶⁷ While they worked, the grand jury kept a close watch

³⁵⁸ *Admits Service Needs Great Reform*, S.F. CALL, at 5, (Jan. 25, 1907),

<https://www.newspapers.com/image/87801331> [<https://perma.cc/243M-UH6H>].

³⁵⁹ *Crowded Cars Crash Together*, S.F. CHRON., at 7, (Feb. 4, 1907),

<https://www.newspapers.com/image/27349335> [<https://perma.cc/BX9X-P8DK>].

³⁶⁰ *Grand Jury Threatens the United Railroads*, S.F. CALL, at 5, (Feb. 27, 1907),

<https://www.newspapers.com/image/87812936> [<https://perma.cc/K2DW-KN22>].

³⁶¹ *Corporations to Give Bonus to the City as Pay for Franchises*, S.F. CALL, at 52, (June 2, 1907),

<https://www.newspapers.com/image/87840216> [<https://perma.cc/A9VR-J34G>].

³⁶² *Calhoun Now Seeks to Have Grand Jury Declared Invalid*, S.F. EXAMINER, at 14, (June 9, 1907),

<https://www.newspapers.com/image/457610738> [<https://perma.cc/Z33N-LQP7>].

³⁶³ *Grand Jury Going After Chapman*, S.F. CALL, at 5, (Feb. 1, 1907),

<https://www.newspapers.com/image/87803763> [<https://perma.cc/G468-DY9E>].

³⁶⁴ *Grand Jury Tells Police to Close Vile Resorts*, S.F. CALL, at 16, (Feb. 2, 1907),

<https://www.newspapers.com/image/87804288> [<https://perma.cc/V5BF-FGXH>].

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Dives Closed, but Lotteries Run*, S.F. CALL, at 29, (Feb. 3, 1907),

<https://www.newspapers.com/image/87804886> [<https://perma.cc/82FR-4YCC>].

on them.³⁶⁸ Bypassing the titular chief, the grand jury started issuing orders directly to the police captains to shut down dens of vice, and they obeyed.³⁶⁹ The chief did not even know about the raids until after they happened.³⁷⁰ He managed to hold onto his job for a while, so the grand jury started ordering him around, too.³⁷¹ Before long, he was grudgingly aiding the grand jury in its investigation against Ruef.³⁷²

Big business did not take kindly to the change in city management, especially when the top brass was indicted by the grand jury for paying bribes. The indicted vice president of a telephone company argued that the grand jury had become a despotic and dictatorial power.³⁷³ Railroad executives joined the fray, calling the body invalid.³⁷⁴ Soon, too, did the gas companies.³⁷⁵ In total, thirteen corporate magnates, defendants all, were assailing the grand jury.³⁷⁶ A trial judge ultimately upheld the validity of the indictments.³⁷⁷

Ignoring the critics, the grand jury kept busy right up until the end. It worked to make sure that elections would be unsullied by ballot box stuffing or fraud at the polls.³⁷⁸ After convening on November 1906, it closed out on December 3, 1907.³⁷⁹ It racked up more indictments than any other in the city's history.³⁸⁰ It held 115 meetings, examined 600 witnesses, and brought 441 indictments against 47 people.³⁸¹ It cost around \$20,000 for the final six months of work.³⁸²

The final report was a polemic against corruption. It called out the "seemingly inconceivable sin, shame and violation of law" by the Schmitz Administration, and laid out myriad suggestions for how to fix the city.³⁸³ Shortly after, the court began

³⁶⁸ *Grand Jury's Eye on Policemen*, S.F. CALL, at 4, (Feb. 7, 1907),

<https://www.newspapers.com/image/87807440/>. [<https://perma.cc/48FC-ZNEC>].

³⁶⁹ *Police Raid Den by Order of Grand Jury*, S.F. CALL, at 10, (Feb. 21, 1907),

<https://www.newspapers.com/image/87811677/> [<https://perma.cc/75RR-MPDJ>].

³⁷⁰ *Id.*

³⁷¹ *Grand Jury Declares Cribs Must Be Closed*, S.F. CALL, at 5, (Mar. 2, 1907),

<https://www.newspapers.com/image/87814744/> [<https://perma.cc/C9L4-Z66Q>].

³⁷² *Dinan Now Collecting Evidence Against Ruef*, S.F. CALL, at 2, (Apr. 3, 1907),

<https://www.newspapers.com/image/87828050/> [<https://perma.cc/M2ZN-48DL>].

³⁷³ *Delmas Makes Bitter Attack on Grand Jury in Argument to Quash Indictment of Glass*, S.F. CALL, at 3, (June 8, 1907), www.newspapers.com/image/87841134/ [<https://perma.cc/UQ2E-VX9C>].

³⁷⁴ *Calhoun Now Seeks to Have Grand Jury Declared Invalid*, S.F. EXAMINER, at 14, (June 9, 1907),

www.newspapers.com/image/457610738/ [<https://perma.cc/8Z87-JRCD>].

³⁷⁵ *Gas Directors Try to Impeach Grand Jury*, S.F. EXAMINER, at 2, (June 19, 1907),

<https://www.newspapers.com/image/457639665/> [<https://perma.cc/FJM3-V2TS>].

³⁷⁶ *Many Corporation Magnates Unite in Attack on Grand Jury's Validity*, S.F. CALL, at 5, (Aug. 23,

1907), www.newspapers.com/image/87849350/ [<https://perma.cc/TM4H-CJJR>].

³⁷⁷ *Judge Lawlor Upholds Validity of Grand Jury Indictments*, S.F. CALL, at 4, (Sept. 4, 1907),

<https://www.newspapers.com/image/87850274/>. [<https://perma.cc/CY9N-ATVR>].

³⁷⁸ *To Await Primary Results Before Retiring*, S.F. CHRON., at 2, (Aug. 5, 1907),

www.newspapers.com/image/27339492/ [<https://perma.cc/MH77-YS3T>].

³⁷⁹ *Oliver Grand Jury Complete Its Work*, L.A. TIMES, at 1, (Dec. 4, 1907),

www.newspapers.com/image/380178494/ [<https://perma.cc/DD3J-3YHL>].

³⁸⁰ *Oliver Grand Jury Will Be Discharged When Ford Case Ends*, S.F. EXAMINER, at 1, (Sept. 30,

1907), www.newspapers.com/image/457945123/ [<https://perma.cc/EEQ4-Y627>].

³⁸¹ *Oliver Grand Jury Complete Its Work*, *supra* note 379, at 1.

³⁸² *Holds Up Grand Jury Bills*, S.F. CALL, at 5, (Dec. 7, 1907),

www.newspapers.com/image/87855968/ [<https://perma.cc/N57X-KKSZ>].

³⁸³ *Grand Jury Bribers' Foe Is Dismissed*, L.A. HERALD, at 9, (Dec. 4, 1907)

<https://www.newspapers.com/image/466048355/> [<https://perma.cc/8MXS-8UPR>].

to select men to serve on the next grand jury, and the judicial circle of life rolled on.³⁸⁴

For all of the indictments, only one man served time behind bars: Abe Ruef. Though he pled guilty, he later violated his plea agreement and was prosecuted.³⁸⁵ His trial did not begin until August 27, 1908, and it would drag on until December 10.³⁸⁶ The record spanned twenty-four bound volumes with twelve thousand printed pages, plus two thousand pages of briefs.³⁸⁷ An intermediate court would go on to say, “We have never before known of such a record being presented to an appellate court.”³⁸⁸ That court affirmed the verdict,³⁸⁹ and the state supreme court did not disturb it.³⁹⁰

There were allegations of jury tampering in many of the failed prosecutions.³⁹¹ Whatever the cause of the acquittals, the positive impact on the city could not be denied. Thanks to the grand jury, scores of corrupt officials were driven from office, numerous reforms were passed, the back of the Ruef political machine was broken. In the words of the *San Francisco Call*, “no matter what the penalty of law, they will carry the brand of crime all their lives.”³⁹² The body’s work, it said, “effected a peaceful revolution in San Francisco.”³⁹³

NEW YORK CITY, NEW YORK

New York has much to love about grand juries. Indeed, the state owes its very legislature to them. In 1681, a colonial New York grand jury indicted custom collector William Dyer for treason when he imposed unlawful taxes and used troops to enforce them.³⁹⁴ The grand jury presented “the great, manifold and insupportable grievances under which the province still doth groan.”³⁹⁵ So outraged was the body that it demanded an elected assembly to remedy the injustices Dyer committed. Relenting, the Duke of York—the English proprietor of the colony—granted New York a representative assembly.³⁹⁶

The representative assembly returned the favor. When the first U.S. Constitution lacked protections for grand juries, New York proposed adding them in,³⁹⁷

³⁸⁴ *Draw New Names for Grand Jury*, S.F. CHRON., at 14, (Dec. 10, 1907), <https://www.newspapers.com/image/27386364> [<https://perma.cc/9KDN-HEP9>].

³⁸⁵ Kamiya, *supra* note 232.

³⁸⁶ *People v. Ruef*, 14 Cal. App. 576, 583 (Dist. Ct. App. 1910).

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.* at 620.

³⁹⁰ *See People v. Ruef*, 114 P. 48 (Cal. 1911).

³⁹¹ *Ford Jurors to Be Investigated by Grand Jury*, S.F. CALL, at 1, (Oct. 7, 1907), <https://www.newspapers.com/image/87854282>; *To Await Primary Results Before Retiring*, S.F. CHRON., at 2, (Aug. 5, 1907), <https://www.newspapers.com/image/27339492> [<https://perma.cc/48WW-UF5F>].

³⁹² *San Francisco Owes Much to the Oliver Grand Jury*, S.F. CALL, at 8, (Dec. 5, 1907), <https://www.newspapers.com/image/87855941> [<https://perma.cc/D77B-3RRB>].

³⁹³ *Id.*

³⁹⁴ YOUNGER, *supra* note 20, at 14.

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.* at 45.

succeeding when the Fifth Amendment in the Bill of Rights was passed. Not to be hypocritical, New York also passed its own bill of rights guaranteeing grand jury rights³⁹⁸—a feature the original state constitution notably lacked.³⁹⁹ To this day, grand juries remain in the state charter.⁴⁰⁰

In the twentieth century, New York City had a well-established system of grand juries. From time-to-time, however, the governor could convene a special grand jury to investigate some matter of public intrigue.⁴⁰¹ Their broad power to investigate crimes learned from any source, even newspaper articles, made them “a bugaboo to crooks.”⁴⁰²

Good thing, too, because by the time of the Great Depression, New York City had come to know well the taint of corruption. Much of it came from ruthless political machines, and none was more storied than Tammany Hall. Before the U.S. Constitution was even drafted, the Tammany Society of New York City was founded in 1786.⁴⁰³ Largely a social club at first, it soon ventured into the froth and foam of politics to promote Thomas Jefferson.⁴⁰⁴ By the election of Andrew Jackson in 1828, it was the dominant player in city politics—a distinction it would hold for one hundred years.⁴⁰⁵ In the 1930s, its best days were behind it, but it was still a force to be reckoned with.⁴⁰⁶

Indeed, there were as many rackets as there were industries in the Big Apple. There was the bakery racket, wherein bakers paid each week for protection from mobsters.⁴⁰⁷ There was the barber racket, which had proprietors paying tribute to corrupt union bosses.⁴⁰⁸ There was the trucking racket, poultry racket, and restaurant racket. There was even a kosher racket.⁴⁰⁹ The gross revenue of the entire underground was said to be half a billion dollars per year, with some guessing a full billion.⁴¹⁰ For all this and more, Manhattan was called “The Modern Gomorrah.”⁴¹¹

All this occurred against the backdrop of a ferocious effort by city officials to staunch the tide of crime. In 1934, there was a fifty percent jump in arrests for

³⁹⁸ N.Y. Act of Jan. 26, 1787.

³⁹⁹ See N.Y. CONST. of 1777.

⁴⁰⁰ N.Y. CONST. 1938, art. I, § 6.

⁴⁰¹ Thomas S. Rice, *Public Counsel Is Called Need in City Probes*, BROOK. DAILY EAGLE, at 12, (July 5, 1936), <https://www.newspapers.com/image/52660503/>.

⁴⁰² *Grand Jurors to Hear Dewey and Governor*, Brook. Daily Eagle, at 72, (Mar. 15, 1936), <https://www.newspapers.com/image/52651460/> [<https://perma.cc/ST2E-NJQQ>].

⁴⁰³ *Tammany Hall*, THE ELEANOR ROOSEVELT PAPERS PROJECT, <https://www2.gwu.edu/~erpapers/teachinger/glossary/tammany-hall.cfm> [<https://perma.cc/3F7Q-E4CZ>] (last visited Apr. 7, 2019).

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ Carl Warren, *Crusader Dewey, Big Shots on the Spot in New Crime Drive*, DAILY NEWS, at 187–88, (July 28, 1935), <https://www.newspapers.com/image/417935622> [<https://perma.cc/LJ9T-APN6>].

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Tap Vice Boss' Wires as Girls Get Orders*, DAILY NEWS, at 220, (Mar. 2, 1935), <https://www.newspapers.com/image/417880727/> [<https://perma.cc/6BXS-Z7PP>]; *Billion Annual Tribute at Stake in New York's Vice and Racket Inquiry*, MIDDLETOWN TIMES HERALD, at 2, (July 22, 1935), <https://www.newspapers.com/image/40175815/> [<https://perma.cc/2AU2-TXEN>].

⁴¹¹ Carl Warren, *Crusader Dewey, Big Shots on the Spot in New Crime Drive*, DAILY NEWS, at 187–88, (July 28, 1935), <https://www.newspapers.com/image/417935622> [<https://perma.cc/U7WM-KGRF>].

organized crime.⁴¹² The prison population had swelled 118 percent between 1926 and 1936—sextuple the rate of population growth overall.⁴¹³ Fines and sentences for mob collectors were doubled.⁴¹⁴ Mayor Fiorello LaGuardia even threatened to disbar lawyers who represented mob bosses and exile mob boss Dutch Schultz from the city.⁴¹⁵

It was not clear that a mayor actually could disbar attorneys or cast out citizens—the city charter bestowed no such powers on him.⁴¹⁶ But such an outburst was perfectly in keeping for LaGuardia. Raised in tenements and lacking a high school or college degree, he was a man governed more by aspirations than reality.⁴¹⁷ When he learned a family had burned to death while trying to call the fire department, he said the telephone company was guilty of murder.⁴¹⁸ When testifying on rent control, he stated: “I come not to praise the landlord but to bury him.”⁴¹⁹ A grand jury could give real teeth to threats against criminals.

The Runaway Grand Jury: February 1935 – July 1935

On February 28, 1935, District Attorney William C. Dodge promised to convene a grand jury to investigate corruption and vice.⁴²⁰ In addition to taking on illegal gambling, the investigation was also set to stop sex trafficking.⁴²¹ Women were trafficked into New York from neighboring states, forced to work as prostitutes, and robbed of three-quarters of their earnings.⁴²² When they were inevitably arrested, crime bosses immediately bailed them out, rechristened them with a new name, and shipped them off to a new market.⁴²³

At the outset, Dodge sounded optimistic: “These rings not only must be broken up, but the men higher up must be apprehended and driven out of the city.”⁴²⁴ Though Dodge could talk big, he could not deliver. There was a general sentiment that the district attorney was lacking in vigor.⁴²⁵ Openly labeled “a Tammany Hall

⁴¹² *City to Blast Vice-Fattened Racket Czars*, DAILY NEWS, at 70, (Mar. 1, 1935), <https://www.newspapers.com/image/417867212> [<https://perma.cc/3VML-TGMS>].

⁴¹³ *N.Y. Grand Jury Head Favors Trade Training for Prisoners*, at 7, MIDDLETOWN TIMES HERALD (Mar. 10, 1936), <https://www.newspapers.com/image/40174408/> [<https://perma.cc/497H-U4A2>].

⁴¹⁴ *Vice Boss' Wires Tapped in Girl Deals*, *supra* note 410, at 8B.

⁴¹⁵ Gerald Duncan, *Schultz Defies LaGuardia Ban*, DAILY NEWS, at 56, (Aug. 3, 1935), <https://www.newspapers.com/image/417980567> [<https://perma.cc/D5A3-GNT9>]; *Policy Probe Is Promised*, POUGHKEEPSIE EAGLE-NEWS, at 3, (Mar. 1, 1935),

<https://www.newspapers.com/image/114327187/> [<https://perma.cc/32YW-AZYG>].

⁴¹⁶ N.Y.C. Charter 1899, §§ 115-138.

⁴¹⁷ ROBERT CARO, *THE POWER BROKER* 354 (1974).

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ *Grand Jury Probe of Policy Racket Promised in City*, POST-STAR, at 2, (Mar. 1, 1935), <https://www.newspapers.com/image/476675974/> [<https://perma.cc/RA42-MRFW>].

⁴²¹ *City to Blast Vice-Fattened Racket Czars*, DAILY NEWS, at 70, (Mar. 1, 1935), <https://www.newspapers.com/image/417867212> [<https://perma.cc/V6UL-3SFE>].

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ *Vice Boss' Wires Tapped in Girl Deals*, *supra* note 410, at 8B.

⁴²⁵ *A Grand Jury's Prerogatives*, BROOK. DAILY EAGLE, at 14, (May 11, 1935), <https://www.newspapers.com/image/52837746/> [<https://perma.cc/DA93-LV9A>].

prosecutor” in the press,⁴²⁶ by the middle of the first month, papers already called the investigation a “flop” that failed to produce a “jot or a tittle” of evidence.⁴²⁷

This was not from lack of trying by the grand jury. It began interviewing witnesses almost at once.⁴²⁸ Anonymous letters giving names and addresses of racketeers started pouring into the body and subpoenas began pouring out, with threats of fines for non-compliance.⁴²⁹

Criminals reacted immediately. Within a couple weeks of invocation, two grand jurors received death threats if they did not “vote the right way” on indictments.⁴³⁰ Giving added heft to the threats, newspapers—as was common practice at the time—printed the names and addresses of jurors.⁴³¹ The grand jury defiantly responded by voting to indict three men involved in illegal gambling, known as the “policy racket.”⁴³² Still, as of yet, they had only nabbed backbenchers.

Grand jurors hit a roadblock when nine witnesses failed to report. Dodge’s process servers, hats in hands, reported that the nine simply could not be found. Witnesses were said to be “out of town” or “off on a cruise.” Lacking witnesses, the grand jury was forced to adjourn with the hope that they would have someone to talk to when they returned.⁴³³

By May, the grand jury was fed up with Dodge and his ineptitude. Foregoing Dodge and his team of investigators, the grand jury started interviewing witnesses on its own. And it was not starting small: its first interviewees were Mayor LaGuardia and Police Commissioner Lewis J. Valentine. Jurors planned to call a former prosecutor who had been fired by Dodge to learn about how the office cavorted with racketeers. Assistant district attorneys were dumbfounded. Dodge huffed that he had not even been informed of the LaGuardia interview. Papers started calling the body the “runaway” grand jury.⁴³⁴

This show of independence was called a “striking illustration of the inherent power of a grand jury—which some officials have been prone to overlook in recent years.”⁴³⁵ This was due to the recent trend of inquests being “too much inclined to follow the desire of the prosecuting officials in their jurisdiction” despite the fact that

⁴²⁶ *H.H. Corbin, Former Spa Man, Rejected as N.Y. Prosecutor*, POST-STAR, at 3, (June 5, 1935), <https://www.newspapers.com/image/476686028/> [<https://perma.cc/5Y27-YJ84>].

⁴²⁷ Carl Warren, *Policy Quiz Fails; Dodge, Aids Split*, DAILY NEWS, at 3, (Mar. 13, 1935), <https://www.newspapers.com/image/417889692/> [<https://perma.cc/6X75-FD9L>].

⁴²⁸ *Two Name Vice Czar*, DAILY NEWS, at 2, (Mar. 5, 1935), <https://www.newspapers.com/image/417923076/> [<https://perma.cc/MXT5-8XQZ>].

⁴²⁹ *Policy Chief Would Squeal to Save Self*, DAILY NEWS, at 10, (Mar. 6, 1935), <https://www.newspapers.com/image/417899442/> [<https://perma.cc/8DQ8-U8ZT>]; *Witnesses Who Refuse to Talk May Face Fines*, POST STAR, at 2, (Mar. 8, 1935),

<https://www.newspapers.com/image/476676688/> [<https://perma.cc/EHP6-B5W7>].

⁴³⁰ *4 Get Death Threat in War on City Vice*, DAILY NEWS, at 3, 6, (Mar. 12, 1935), <https://www.newspapers.com/image/417871390/> [<https://perma.cc/658H-TZM6>].

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *9 Witnesses Flee Vice Quiz of Grand Jury*, DAILY NEWS, at 58, (Apr. 12, 1935), <https://www.newspapers.com/image/418061165/> [<https://perma.cc/56HB-JPDQ>].

⁴³⁴ *Jury Grills Mayor, Valentine on Vice*, DAILY NEWS, at 3, (May 10, 1935), <https://www.newspapers.com/image/417259361/> [<https://perma.cc/T5WC-75GE>].

⁴³⁵ *A Grand Jury’s Prerogatives*, BROOK. DAILY EAGLE, at 14, (May 11, 1935), <https://www.newspapers.com/image/52837746/> [<https://perma.cc/3CSF-UCZC>].

they could indict in defiance of the prosecutor and judge.⁴³⁶ If anyone had overlooked the power of the grand jury before, they no longer could.

It was not easy work. The grand jury had to inform the judge multiple times they had been stonewalled by a lack of witnesses.⁴³⁷ This was a common problem. Witnesses against organized crime were often subject to intimidation, beatings, or murder.⁴³⁸ Conviction was all but impossible without witness cooperation.⁴³⁹

Reverend George Drew Egbert called upon Governor Herbert Lehman to appoint a special prosecutor to aid the grand jury.⁴⁴⁰ Not long after, the local reformer group joined the call for Dodge's removal because he had "proved himself inefficient, or worse."⁴⁴¹ It criticized him for going after the victims of crime, like sex workers, instead of the system that produced them.⁴⁴²

The grand jurors were no slouches on their own. Foreman Lee Thompson Smith boasted that they were a working grand jury, not a talking grand jury.⁴⁴³ In a speech before the Kings County Grand Jurors, Smith rallied the troops, saying, "[i]t is time that the Grand Juries did something about crime," a scourge on the city that he estimated cost every city dweller \$9.05 per year in police, prisons, parole boards, and prosecutors.⁴⁴⁴ "It is required," he continued, "that they shall—not may—shall investigate any crime within the boundary of their county."⁴⁴⁵

Under grand jury direction—cutting out the prosecutor—police raided an underground gambling operation, capturing men, machines, ledgers, and nearly 200,000 gambling slips.⁴⁴⁶ The apprehended criminals had evaded capture for six years.⁴⁴⁷ The grand jury also returned six indictments in connection with the policy racket.⁴⁴⁸

Further snubbing Dodge, rumor said that the grand jury asked the governor to fire Dodge and give them a special prosecutor to assist the investigation.⁴⁴⁹ As he waited to learn his fate, Dodge had to start asking reporters for updates about the investigation.⁴⁵⁰ His patience soon ran out and he started touting his own track record

⁴³⁶ *A Grand Jury's Prerogatives*, *supra* note 386, at 14.

⁴³⁷ Thomas S. Rice, *Grand Jurors to Hear Dewey and Governor*, BROOK. DAILY EAGLE, at E9, (Mar. 15, 1936), <https://www.newspapers.com/image/52651460> [<https://perma.cc/Z29Q-3PMH>].

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *2 Policy Ring Arrests May Bare Big Shot*, DAILY NEWS, at 4, (May 13, 1935), <https://www.newspapers.com/image/417439562/> [<https://perma.cc/QN45-JQCM>].

⁴⁴¹ *Dodge Ouster Demanded by Reform Body*, DAILY NEWS, at 11, (May 19, 1935), <https://www.newspapers.com/image/417447814> [<https://perma.cc/UD3Z-8369>].

⁴⁴² *Id.*

⁴⁴³ *Probers Still Jilt Dodge in Rackets Quiz*, DAILY NEWS, at 17, (May 14, 1935), <https://www.newspapers.com/image/417440561/> [<https://perma.cc/3TAJ-KN7D>].

⁴⁴⁴ *Foreman Smith Sees Challenge by Racketeers*, BROOK. DAILY EAGLE, at 3, (May 18, 1935), <https://www.newspapers.com/image/52843003/> [<https://perma.cc/3YNB-C6G3>].

⁴⁴⁵ *Id.*

⁴⁴⁶ *2 Policy Ring Arrests*, *supra* note 440, at 4.

⁴⁴⁷ *Id.*

⁴⁴⁸ Carl Warren, *Dodge to Let Jury Select Vice Prober*, DAILY NEWS, at 4, (May 22, 1935), <http://www.newspapers.com/image/418400726> [<https://perma.cc/SZTT-CUYD>].

⁴⁴⁹ *Probers Still Jilt Dodge in Rackets Quiz*, *supra* note 443, at 17.

⁴⁵⁰ *Dodge Defies Grand Jury to Act on Rackets*, BROOK. DAILY EAGLE, at 15, (May 15, 1935), <https://www.newspapers.com/image/52841105/> [<https://perma.cc/G52M-S9WN>].

as a prosecutor and sniping at the grand jury for not moving quickly enough.⁴⁵¹ The grand jury barred him from meetings altogether and started drawing up names of potential replacements.⁴⁵² Tail between his legs, Dodge withdrew his staff from the investigation and agreed to have a new prosecutor appointed.⁴⁵³ Deciding whom to appoint proved difficult, however, and the grand jury and Dodge deadlocked over whom to select.⁴⁵⁴ Dodge tried to foist a crony upon the grand jury, but the body refused to accept the appointment.⁴⁵⁵

There was a steep price for the body's intransigence. Without a prosecutor attached to it, it would be forced to disband.⁴⁵⁶ Rather than plod along with a feckless prosecutor, the grand jury decided to stick to its guns and resign.⁴⁵⁷

Though grand juries are best remembered for their indictments, this one also took a hard look at the justice system. In the body's 52,000-word report, it called out the failures of the prison system. Prisoners were put to work behind bars, but not given any meaningful skills or education that would allow them to find remunerative employment, which set them back to a life of crime. The results spoke for themselves: at one prison, of the 1,200 inmates, all but 41 were repeat offenders.⁴⁵⁸

Even though the grand jury was formally disbanded, its members soldiered on. They found so many matters that needed further investigation, that they called for a new panel.⁴⁵⁹ They asked the governor to appoint a special prosecutor "of outstanding capacity and public prestige" so that it could resume its work.⁴⁶⁰ Governor Lehman kept his cards close to his chest on the matter as he studied it.⁴⁶¹

About a week later, the governor demanded that Dodge appoint a genuine special prosecutor or else the matter would be taken out of his hands.⁴⁶² Dodge reluctantly agreed in a major victory for the grand jury.⁴⁶³ But going down the list of prominent attorneys that the governor told him to choose from, Dodge found that

⁴⁵¹ Carl Warren, *Racket Bail Cases Up to Jury Today*, DAILY NEWS, at 16, (May 16, 1935), <https://www.newspapers.com/image/417432660/> [<https://perma.cc/5TRX-7WG4>].

⁴⁵² *Lehman Studies Dodge Situation*, BROOK. DAILY EAGLE, at 1, (May 21, 1935), <https://www.newspapers.com/image/52845685/> [<https://perma.cc/W8DF-YHRM>].

⁴⁵³ Warren, *supra* note 407, at 4.

⁴⁵⁴ Carl Warren, *Jury and Dodge Fail to Pick Vice Prober*, DAILY NEWS, at 21, (May 28, 1935), <https://www.newspapers.com/image/418057148/> [<https://perma.cc/SHN8-WY5B>].

⁴⁵⁵ Carl Warren, *Prober Asks War on Vice; Jury Bars Him*, DAILY NEWS, at 23, (June 4, 1935), <https://www.newspapers.com/image/418033633/> [<https://perma.cc/GD9E-LWPN>].

⁴⁵⁶ *Dodge Invites Vice Jury to Supplant Him*, DAILY NEWS, at 3, (June 8, 1935), <https://www.newspapers.com/image/415431836/> [<https://perma.cc/BH8E-GX24>].

⁴⁵⁷ *Grand Jury Gives Up; Vice Probe Blocked*, DAILY NEWS, at 6, (June 11, 1935), <https://www.newspapers.com/image/415443375/> [<https://perma.cc/WR3J-FS5S>].

⁴⁵⁸ *N.Y. Grand Jury Head Favors Trade Training for Prisoners*, MIDDLETOWN TIMES HERALD, at 7, (Mar. 10, 1936), <https://www.newspapers.com/image/40174408/> [<https://perma.cc/3BXZ-96SV>].

⁴⁵⁹ Rice, *supra* note 437, at E9.

⁴⁶⁰ *Racket Jury to Ask Governor for Help*, DAILY NEWS, at 8, (June 15, 1935), <https://www.newspapers.com/image/415316258/> [<https://perma.cc/KY3V-XQ7Q>] (internal quotations omitted).

⁴⁶¹ See *Lehman Stays Hand on Grand Jury Plea*, DAILY NEWS, at 16, (June 18, 1935), <https://www.newspapers.com/image/415327017/> [<https://perma.cc/QNN2-TUT8>].

⁴⁶² *Lehman Warns Dodge to Name Vice Prosecutor*, POST-STAR, at 1, (June 25, 1935), <https://www.newspapers.com/image/476689412/> [<https://perma.cc/QD5X-6DTY>].

⁴⁶³ *Dodge Agrees to Name Prosecutor from Lehman List*, DUNKIRK EVENING OBSERVER, at 1, (June 26, 1935), <https://www.newspapers.com/image/56283712/> [<https://perma.cc/QG5C-KNDH>].

nobody wanted the job. Perhaps they did not want to draw the ire of mob bosses or deal with an irascible grand jury. They claimed they could not accept due to “professional and public obligations,” but each one of them suggested the same man for the job: former U.S. Attorney Thomas E. Dewey.⁴⁶⁴

In modern times, Dewey is best remembered as the man who ran and lost for president twice—if he is remembered at all. His most famous accomplishment was being briefly, and wrongly, crowned the victor against Harry S. Truman by the *Chicago Daily Tribune*. And his bloodless 1948 campaign is used as a case study in timidity. But before he entered the thicket of presidential politics, he held an immaculate public image.

Born in Owosso, Michigan in the upstairs of his grandfather's general store, Dewey was a man of courage. During his time as Manhattan District Attorney, he received a letter and phone call stating he would be assassinated on his commute home that evening. He took his usual route home with only one change: he left the lights on inside his car as he drove.⁴⁶⁵ So successful was he at fighting crime that he was called “America's Greatest Prosecutor.”⁴⁶⁶

Whereas all of his peers quickly rejected the job of special prosecutor, Dewey quickly accepted it.⁴⁶⁷ Dewey made clear he was interested in going after the big dogs, not small fries. He said the purpose was “not merely to stop gambling and close brothels” but to “stamp out so far as possible organized crime and racketeering of all kinds.”⁴⁶⁸

To carry out this mission, he was given enormous resources, including ten thousand square feet of office space in the Woolworth Building, twenty attorneys, and a squad of researchers.⁴⁶⁹ So efficacious was the staff that they questioned 3,000 witnesses in four weeks.⁴⁷⁰ Three decades before Stan Lee coined the term, Dewey called his team the “X men.”⁴⁷¹

The Extraordinary Grand Jury: July 1935 – January 1936

The Smith grand jury threw itself upon a spear in order to banish Dodge, but now a new panel was necessary. So, in the last gasp of July, trial judge Philip J. McCook summoned fifty men to draw from. Dewey whittled the number down to

⁴⁶⁴ *Vice Quiz Crown Goes Begging as 4 of G.O.P. Balk*, DAILY NEWS, at 2, (June 28, 1935), <https://www.newspapers.com/image/416902697/> [<https://perma.cc/49PQ-VD4A>].

⁴⁶⁵ Russell Fowler, *Thomas E. Dewey: America's Greatest Prosecutor*, TENN. BAR ASS'N: TBA L. BLOG (Nov. 1, 2017), <https://www.tba.org/journal/thomas-e-dewey-america-s-greatest-prosecutor> [<https://perma.cc/2DWJ-TZG6>].

⁴⁶⁶ *See id.*

⁴⁶⁷ *Dewey Accepts Vice Probe Job*, POST-STAR, at 3, (July 2, 1935), <https://www.newspapers.com/image/476675958/> [<https://perma.cc/UH2X-FUTL>].

⁴⁶⁸ Carl Warren, *Dewey to Skip Vice, Aim at Bigger Game*, DAILY NEWS, at 8, (July 6, 1935), <https://www.newspapers.com/image/415217561/> [<https://perma.cc/B9NU-PJ5J>] (internal quotations omitted).

⁴⁶⁹ Carl Warren, *Dewey Puts Up Shield Against Racket Spies*, DAILY NEWS, at 155, (July 17, 1935), <https://www.newspapers.com/image/415209557/> [<https://perma.cc/MF63-DZZC>].

⁴⁷⁰ *Dewey Obtains First Racket Indictment*, DAILY NEWS, at 557, (Sept. 5, 1935), <https://www.newspapers.com/image/418121090/> [<https://perma.cc/XX2M-585A>].

⁴⁷¹ *Dewey Begins Second Drive*, POUGHKEEPSIE EAGLE-NEWS, at 2, (July 10, 1936), <https://www.newspapers.com/image/114440745/> [<https://perma.cc/4AUK-REMA>].

twenty-three.⁴⁷² When they were selected, he said “I’ve never seen a finer group of men on a grand jury.” L. Seton Lindsay, Henry Lee Norris, and Bernard W. Vogel were picked as foreman, assistant foreman, and clerk, respectively.⁴⁷³

The convening judge commanded the panel to use its almost “unparalleled opportunity” to end the “intolerable system” of graft in New York.⁴⁷⁴ While other grand juries in the city would handle routine crimes, this one was specially designated to take on organized crime,⁴⁷⁵ earning it the title “The Extraordinary Grand Jury.”⁴⁷⁶

The panel would not actually embark until September 4, 1935, at 10:30AM, in the county courthouse.⁴⁷⁷ Within 24 hours, it had already returned its first indictment. It was against an extortionist who collected money from an apartment owner for “protection.”⁴⁷⁸ He pled guilty a few days later.⁴⁷⁹ A second person was later held in contempt for failing to turn over corporate books.⁴⁸⁰

But these were only appetizers. In October, the grand jury set in on its first big target: the garment industry. Ruled by kingpins Louie Lepke and Jacob Shapiro, the garment racket pulled in \$5 million per year, but only paid taxes on about \$50,000 of it. Police seized five carloads of books from the pair’s front corporation and accountants started pouring over them before giving them to the grand jury. Fourteen people arrested at the raid agreed to testify in exchange for being released.⁴⁸¹

Later on, a dress company was raided and had its books hauled off to probe the garment racket.⁴⁸² Three dress executives were arraigned for setting up dummy corporations to launder money.⁴⁸³ Sixteen were indicted with conspiracy,⁴⁸⁴ and

⁴⁷² *War on Crime and Rackets Is Started*, TIMES HERALD, at 1, (July 29, 1935), <https://www.newspapers.com/image/41223220/> [<https://perma.cc/5RQF-F77J>].

⁴⁷³ *Dewey Urges Victims to Aid*, BROOK. DAILY EAGLE, at 3, (July 30, 1935), <https://www.newspapers.com/image/52624452/> [<https://perma.cc/HJ39-4249>].

⁴⁷⁴ *May the Quest Succeed*, DEMOCRAT AND CHRON., at 12, (Aug. 1, 1935), <https://www.newspapers.com/image/135203708/> [<https://perma.cc/U7ZJ-FV53>].

⁴⁷⁵ *Off for Long Run*, STAR-GAZETTE, at 6, (Aug. 2, 1935), <https://www.newspapers.com/image/276675115/> [<https://perma.cc/LG8L-8W6K>].

⁴⁷⁶ *Dewey Cracks Penalty Lash on Witnesses*, DAILY NEWS, at 103, (Dec. 21, 1935), <https://www.newspapers.com/image/418420277/> [<https://perma.cc/T9ZP-5482>].

⁴⁷⁷ *Dewey’s Jury Will Compel Mum to Talk*, DAILY NEWS, at 214, (Sept. 4, 1935), <https://www.newspapers.com/image/418016081/> [<https://perma.cc/3RT2-QYEX>].

⁴⁷⁸ *Dewey Obtains First Racket Indictment*, DAILY NEWS, at 557, (Sept. 5, 1935), <https://www.newspapers.com/image/418121090/> [<https://perma.cc/9VRW-SWJD>].

⁴⁷⁹ *Racket Quiz Gains First Conviction*, DAILY NEWS, at 156, (Sept. 11, 1935), <https://www.newspapers.com/image/418077261/> [<https://perma.cc/7J75-EYQF>].

⁴⁸⁰ *Dewey Witness Held in Contempt*, BROOK. DAILY EAGLE, at 1, (Oct. 4, 1935), <https://www.newspapers.com/image/52605905/> [<https://perma.cc/7JAP-GKQ8>].

⁴⁸¹ *Two Garment Racket Kings Under Probe*, DAILY NEWS, at 83, (Oct. 16, 1935), <https://www.newspapers.com/image/418415989/> [<https://perma.cc/REZ2-KUBT>].

⁴⁸² *Dewey Gets New Jury; Raids Garment Firm*, DAILY NEWS, at 16, (July 8, 1936), <https://www.newspapers.com/image/418693371/> [<https://perma.cc/AH3G-V8L6>].

⁴⁸³ *Arraign 3 in Racket Probe of Dress Trade*, DAILY NEWS, at 395, (Oct. 2, 1936), <https://www.newspapers.com/image/418724797/> [<https://perma.cc/MBG7-ZH55>].

⁴⁸⁴ *Indict Lepke, Gurrah and 14 in New Racket*, DAILY NEWS, at 255, (Aug. 10, 1937), <https://www.newspapers.com/image/421539410/> [<https://perma.cc/TK6V-EUZP>].

another with lying about payments made to crime lords.⁴⁸⁵ Two defendants would plead guilty to wholesale racketeering in the garment industry, and two others fled to the Middle East to escape punishment.⁴⁸⁶

Next up was the loan shark ring.⁴⁸⁷ Raids led to two dozen quick mob arrests on charges of usury or unlicensed lending. Interest rates could be as high as 20 percent per week, which works out to 1040% annually. Borrowers would therefore be hopelessly ensnared in interest payments without touching the principal. Those who did not pay were beaten by thugs and wound up in the hospital—and still had to pay.⁴⁸⁸

Fortunately for the investigation, willing victims were plentiful. More than 500 debtors lined up to speak against their creditors. It was learned that the hoodlums preyed on the poor, some specialized in targeting government workers or those on public assistance. The worst of the bunch, a loan shark who threatened to slit the throats of delinquent debtors, was facing a practical life sentence.⁴⁸⁹ In no time at all, the heads of the loan shark racket were convicted and sentenced. Five men went to prison, with terms ranging from six months to five years.⁴⁹⁰ Before the year was out, there would be twenty-nine indictments and informations filed, and twenty-eight convictions.⁴⁹¹

As the year drew to a close, so too did the grand jury. Since convening in September, the body heard more than 500 witnesses.⁴⁹² In its final report, the grand jury warned that a handful of criminal overlords ruled the city, sitting atop an army of lieutenants and henchmen.⁴⁹³ It would pass the torch to a team of grand juries working in concert.⁴⁹⁴ Though it did not finish the job, the Lindsey grand jury could “claim credit for cleaning up the loan sharks pretty thoroughly.”⁴⁹⁵

The Successor Grand Juries: January 1936 onward

The successor grand juries took off on January 27, 1936.⁴⁹⁶ Swearing them in,

⁴⁸⁵ *Seize Executive for Hiding Racket Tribute*, DAILY NEWS, at 45, (Mar. 31, 1937), <https://www.newspapers.com/image/420856382/> [<https://perma.cc/SGT2-LVLP>].

⁴⁸⁶ *Lepke, Gurrah Shift Racket to Palestine*, DAILY NEWS, at 30, (Sept. 23, 1937) <https://www.newspapers.com/image/420889035/> [<https://perma.cc/EK22-E8P9>]; *Racket Sentences Delayed by Dewey*, BROOKLYN DAILY EAGLE, at 6, (June 22, 1937), <https://www.newspapers.com/image/52770427/> [<https://perma.cc/Y7N2-LD9H>];

⁴⁸⁷ Donald Wilcox, *War on Loan Sharks by Dewey Snares 27*, DAILY NEWS, at 104, (Oct. 29, 1935), <https://www.newspapers.com/image/418167381/> [<https://perma.cc/GY4F-NJDH>].

⁴⁸⁸ *Id.*

⁴⁸⁹ *21 Shylocks Held in \$174,500 Bail*, Daily News, at 16, (Oct. 30, 1935), <https://www.newspapers.com/image/418181557/> [<https://perma.cc/W4L4-8ZLJ>].

⁴⁹⁰ *Boro Shylocks Given 5 Years in Dewey Drive*, Brook. Daily Eagle, at 2, (Nov. 22, 1935), <https://www.newspapers.com/image/52639467/> [<https://perma.cc/A6QG-E6TX>].

⁴⁹¹ Carl Warren, *Probe Bares 12 as Racket Kings*, Daily News, at 2, (Dec. 27, 1935), <https://www.newspapers.com/image/418410954/> [<https://perma.cc/3DH8-DZ7G>].

⁴⁹² *Id.* at 4.

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

⁴⁹⁵ *Dismiss*, Poughkeepsie Eagle-News, at 3, (Jan. 3, 1936),

<https://www.newspapers.com/image/114198001/> [<https://perma.cc/9BS8-CENE>].

⁴⁹⁶ *See Dewey Instructs Jury*, Brooklyn Daily Eagle, at 1, (Jan. 27, 1936), <https://www.newspapers.com/image/52696897/> [<https://perma.cc/J9BC-FFM8>].

Judge John J. Fitzgerald extolled the institution of the grand jury and dismissed a recent proposal to abolish it.⁴⁹⁷ He said, “[f]or centuries the grand jury has done well in the work of administrating justice.”⁴⁹⁸ Andrew P. Weinberg was named foreman, and Michael J.J. Farley was assistant foreman.⁴⁹⁹

As the Weinberg grand jury came into being, investigators broke open a \$12 million prostitution ring involving 100 women and 10 men across 41 brothels. This was but a fraction of the estimated 200 houses of ill fame operating in the city, with 2,000 women working among them. The main target of the raids were the managers, who exploited the women and took nearly nine out of every ten dollars they earned.⁵⁰⁰

Clientele at the brothels included the rich and powerful. Among them were the owner of a major league baseball team, a bank president, and other business executives.⁵⁰¹ These high rolling customers could spend as much as \$1000 per night.⁵⁰² Shamed though they might have been to have their private business aired, the customers were not the target of the investigation. “It is not our object to prosecute the prostitutes, pimps and other underlings,” said Dewey, “[w]e want the big shots.”⁵⁰³

The kingpin—or queenpin—of the prostitution was a twenty-one-year-old woman described as the “brains” of the operation who lured girls from coal country into lives of profligacy.⁵⁰⁴ Her headquarters was located just two blocks from the police commissioner’s office.⁵⁰⁵ Known as the “Mott Street mob,” the leadership of the prostitution ring was soon in custody and arraigned, with a collective bail of \$435,000.⁵⁰⁶ Of the top brass, none were hit harder than Charles “Lucky” Lucanio. The indictment against him contained ninety counts, which meant he faced the prospect of 1,950 years behind bars.⁵⁰⁷

After a lengthy trial, Lucania and eight of his henchmen were convicted on sixty-two counts of compulsory prostitution. Called the “most useful conviction in New York in a quarter of a century,” the move caught Lucanio off guard.⁵⁰⁸ He had,

⁴⁹⁷ *Hits Lehman Bill on Grand Juries*, Brook. Daily Eagle, at 1, (Feb. 3, 1936), <https://www.newspapers.com/image/52831691/> [<https://perma.cc/UC9G-6QVF>].

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.*

⁵⁰⁰ *Vice Ring Raids Trap 100 Women*, Poughkeepsie Eagle-News, at 2, (Feb. 3, 1936), <https://www.newspapers.com/image/114207612/> [<https://perma.cc/TRG2-975G>].

⁵⁰¹ George Kenney, *Vice Drive Traps \$1,000,000 ‘Queen’*, DAILY NEWS, at 3, (Feb. 9, 1936), <https://www.newspapers.com/image/418483782/> [<https://perma.cc/U3LD-XDTC>].

⁵⁰² *Id.*

⁵⁰³ Barton Pevear, *Dewey Says Lucania Seized Vice Industry*, BROOK. DAILY EAGLE, at 1, (May 13, 1936), <https://www.newspapers.com/image/52649243/> [<https://perma.cc/TTF4-KTLH>].

⁵⁰⁴ *G-Men Arrest Vice Queen, 21, in Aiding Dewey*, BROOK. DAILY EAGLE, at 1, (Feb. 4, 1936), <https://www.newspapers.com/image/52831973/> [<https://perma.cc/FM7Q-WCSP>].

⁵⁰⁵ John Martin, *Dewey’s Vice Raids Peril Police Jobs*, DAILY NEWS, at 6, (Feb. 4, 1936), <https://www.newspapers.com/image/418312386/> [<https://perma.cc/GF74-4Z52>].

⁵⁰⁶ *Vice Crusader Rushes 11 Cases to Grand Jury*, DEMOCRAT & CHRON., at 2, (Feb. 4, 1936), <https://www.newspapers.com/image/135242491/> [<https://perma.cc/TZK3-EBHU>].

⁵⁰⁷ *See Vice Suspects Face Maximum of 1,950 Years*, BROOK. DAILY EAGLE, at 7, (Apr. 24, 1936), <https://www.newspapers.com/image/52672982/> [<https://perma.cc/7KH3-TU8L>].

⁵⁰⁸ Thomas Rice, *Fall of Lucky Gives Gangland Stunning Blow*, BROOK. DAILY EAGLE, at 6, (June 8, 1936), <https://www.newspapers.com/image/52833587/> [<https://perma.cc/6MHB-CCP8>].

after all, been arrested eleven times before with hardly any consequences. The trial had shattered one of organized crime's strongest weapons: the assurance to its members that they would be protected from legal retribution.⁵⁰⁹ Criminals throughout Gotham took note.

Having lived to see the prostitution ring smashed, the Weinberg grand jury felt it time to bow out. It issued a preliminary report asking the governor to name two additional grand juries to handle the high volume of work.⁵¹⁰ At five months of service, the present jurors were worn thin, though satisfied with their work.⁵¹¹

Governor Lehman happily approved a new grand jury, with a new judge to preside over it.⁵¹² Ferdinand Pecora, a judge and former assistant district attorney, was appointed as the new judge to preside over the grand jury. Despised by Wall Street from his time investigating it, Pecora was right at home taking on moneyed interests in the underworld.⁵¹³

Though a second grand jury would double the reach of the investigation, it was not sufficient. The grand jury working with Dewey recommended a "decent vigilante committee" be established, comprised of civic leaders, to help smash crime in the city.⁵¹⁴ Known as the Guggenheim Committee, its main goal was to encourage businessmen to testify against gangsters.⁵¹⁵ Its secondary purpose was to serve as a watchdog against police, judges, and prosecutors, lest they too succumb to mob corruption.⁵¹⁶ In other cities, similar committees also tracked criminal justice data—greatly speeding up the disposition of cases in the process.⁵¹⁷ The group was to be nonpartisan, and Mayor LaGuardia quickly arranged a meeting with prominent citizens to discuss its formation.⁵¹⁸

It is easy to see why the grand jury wanted backup. There was no shortage of targets. The next big one was the restaurant racket. A cabal of corrupt union leaders, lawyers, and gangsters fleeced employers and employees alike.⁵¹⁹ They operated by embezzling funds from unions and owners' associations and imposing mandatory "initiation fees" upon establishments that could be as high as \$10,000. If a proprietor stood up to them, the grifters were all too happy to resort to threats, violence, strikes, and stench bombs to persuade them.⁵²⁰

⁵⁰⁹ *See id.*

⁵¹⁰ Russ Symontowne, *Dannemora to Part Luciano from Gang*, DAILY NEWS, at 123, (July 1, 1936), <https://www.newspapers.com/image/418683062/> [https://perma.cc/Q7SY-ZZDV].

⁵¹¹ *See id.*

⁵¹² *Dewey Gets New Jury; Raids Garment Firm*, DAILY NEWS, at 16, (July 8, 1936), <https://www.newspapers.com/image/418693371/> [https://perma.cc/67ZZ-CMJ7].

⁵¹³ *Pecora Aid Enlisted in Racket War*, DAILY NEWS, at 540, (July 9, 1936),

<https://www.newspapers.com/image/418704125/> [https://perma.cc/HBN4-JWXL].

⁵¹⁴ Melvin L. Barnet, *Vigilantes Cleaned Out the 'Innocents'*, BROOK. DAILY EAGLE, at 1, (Aug. 13, 1936), <https://www.newspapers.com/image/52630164/> [https://perma.cc/FB9J-BA2V].

⁵¹⁵ Thomas S. Rice, *Rice Suggests Some Methods for Vigilantes*, BROOK. DAILY EAGLE, at 12, (Aug. 16, 1936), <https://www.newspapers.com/image/52631549/> [https://perma.cc/TMR4-M6EP].

⁵¹⁶ *Id.*

⁵¹⁷ *Id.*

⁵¹⁸ *Anti-Rackets Group Urged*, BROOK. DAILY EAGLE, at 1, (Aug. 10, 1936), <https://www.newspapers.com/image/52628549/> [https://perma.cc/QG78-YHUZ].

⁵¹⁹ Neal Patterson, *14 Indictments Nip \$2,000,000 Café Graft Mob*, DAILY NEWS, at 145, (Oct. 21, 1936), <https://www.newspapers.com/image/420515326/> [https://perma.cc/TH5M-Z5EX].

⁵²⁰ *Id.*

Estimated to yield \$2 million annually, the restaurant racket victimized as many as 110 eateries, including some of the city's most popular.⁵²¹ The Metropolitan Restaurant & Cafeteria Association was the nerve center for the scheme, which had been running since 1932.⁵²² The racket was built up by the late, infamous mob boss Dutch Schultz.⁵²³

Schultz—né Arthur Flegenheimer—had also been the head of the city's underground policy racket.⁵²⁴ He had a rags-to-riches story, though not an uplifting one. After being born into the slums of the Bronx, he was abandoned by his father.⁵²⁵ This scarred him so deeply that, for the rest of his life, he denied that his father ever left.⁵²⁶ He took up work as a professional gangster, landing himself in prison by age seventeen.⁵²⁷ Out of prison, he started bootlegging in New York during Prohibition.⁵²⁸ Within a few years, he was raking in vast sums of money.⁵²⁹

Despite the ongoing grand jury investigation, Schultz asked the ruling mob families for permission to assassinate Dewey.⁵³⁰ Fearful that murdering a prosecutor would draw too much attention, the crime lords decided to have Schultz killed instead and did so with aplomb in the bathroom of the Palace Chophouse in Newark.⁵³¹

At least this allowed Schultz to escape prosecution for his role in the scheme. The same could not be said for his compatriots. More than a dozen defendants were charged with shaking down restaurants for protection money.⁵³² It was the first time that anyone had ever been charged for this type of racketeering.⁵³³ All told, the defense team had twelve lawyers—ten at counsel table and two on the charge sheet.⁵³⁴ One of the defendants jumped to his death from his fifth-floor apartment rather than face trial.⁵³⁵

⁵²¹ Hal Burton, *Dempsey's Among 110 Listed Racket Dupes*, DAILY NEWS, at 4, (Oct. 31, 1936), <https://www.newspapers.com/image/420459019/> [<https://perma.cc/L84Z-M2TE>].

⁵²² *Id.*

⁵²³ PATTERSON, *supra* note 519, at 145.

⁵²⁴ *Grand Jury Probe of Policy Racket Promised in City*, POST-STAR, at 2, (Mar. 1, 1935), <https://www.newspapers.com/image/476675974/> [<https://perma.cc/65PK-YF52>].

⁵²⁵ *Dutch Schultz, He Was a Loose Cannon in the Mob*, OUTLAW J., <https://www.babyfacenelsonjournal.com/dutch-schultz.html> [<https://perma.cc/5KEY-HZCA>] (last visited Feb. 27, 2020).

⁵²⁶ *Id.*

⁵²⁷ William DeLong, *Gangster Dutch Schultz Died A Millionaire, But Where Did All His Money Go?*, ATI, (Mar. 30, 2018) <https://allthatsinteresting.com/dutch-schultz> [<https://perma.cc/6LYE-ZEPY>].

⁵²⁸ *Id.*

⁵²⁹ *Id.*

⁵³⁰ Goldy Levy, *This Day in Jewish History 1935: A Jewish Mobster Is Gunned Down in a Newark Toilet*, HAARETZ, (Oct. 23, 2016), <https://www.haaretz.com/jewish/jewish-mobster-gunned-down-in-newark-toilet-1.5447844> [<https://perma.cc/9WEW-ZRM7>].

⁵³¹ *Id.*

⁵³² Russ Symontowne, *Pincus Evades Racket Trial by Death Leap*, DAILY NEWS, at 144, (Dec. 30, 1936), <https://www.newspapers.com/image/420812168/> [<https://perma.cc/DL5U-2J5W>].

⁵³³ *Id.*

⁵³⁴ *Attorney Flays His Profession at Racket Trial*, BROOK. DAILY EAGLE, at 3, (Jan. 22, 1937), <https://www.newspapers.com/image/52926808/> [<https://perma.cc/MT8N-TSJB>].

⁵³⁵ SYMONTOWNE, *supra* note 510, at 121.

Trial commenced in January 1937.⁵³⁶ The final indictment was 153 pages long.⁵³⁷ Midway through trial, one of the defendants pled guilty and turned on his peers.⁵³⁸ Legions of victims testified; so many that fifty of them who testified before the grand jury were not even needed at trial.⁵³⁹ The defense, on the other hand, was forced to start attacking its own witnesses.⁵⁴⁰

Predictably, the trial ended with a slew of convictions. All of the defendants were found guilty.⁵⁴¹ After many weeks of testimony, the jury took less than five hours to decide the case.⁵⁴² It nearly took longer to simply read out the verdict. The foreman had to call out “guilty” 182 times for each charge against each defendant. Stiff prison sentences were imposed on the defendants after the judge called them “hypocritical scoundrels.”⁵⁴³ With the conviction, restaurant owners were “freed of the terror and domination of gangsters,” and two large labor unions were “freed from gangster control.”⁵⁴⁴

As April began, yet another grand jury announced that it was worn out.⁵⁴⁵ After many months of working full days, the jurors wished to return to their normal lives.⁵⁴⁶ And so, yet another grand jury was organized. It was set to be impaneled on the 27th and had a broad mandate to investigate any and all acts of racketeering, vice, organized crime, or corrupt law enforcement.⁵⁴⁷

By Independence Day of the second year of the investigation, the grand juries had collectively earned sixty-two successful convictions.⁵⁴⁸ Around that time, they took on their biggest target: the \$100 million policy racket. The racket operated through a network of 10,000 conspirators.⁵⁴⁹ At the bottom of the pyramid were “collectors,” seemingly innocent storekeepers, barbers, or elevator boys who

⁵³⁶ *Racket Trial of 9 on Today*, DEMOCRAT & CHRON., at 6, (Jan. 18, 1937), <https://www.newspapers.com/image/135488096/> [<https://perma.cc/C9GJ-4LLE>]

⁵³⁷ *Id.*

⁵³⁸ Russ Symontowne, *Racketeer Aid Pleads Guilty at Trial of 9*, DAILY NEWS, at 3, (Jan. 19, 1937), <https://www.newspapers.com/image/420827592/> [<https://perma.cc/H777-HCA8>].

⁵³⁹ *Dewey to Halve Witness List*, BROOK. DAILY EAGLE, at 2, (Feb. 14, 1937), <https://www.newspapers.com/image/135488096/> [<https://perma.cc/PH9D-R2YF>].

⁵⁴⁰ *Defense Attacks Own Witness in Cafe Graft Trial*, BROOK. DAILY EAGLE, at 2, (Mar. 3, 1937), <https://www.newspapers.com/image/53707620/> [<https://perma.cc/8QZB-XRGB>].

⁵⁴¹ John Crosson, *Cafe 7 Guilty, Face 2, 400 Years in Jail*, DAILY NEWS, at 382, (Mar. 26, 1937), <https://www.newspapers.com/image/420832596/> [<https://perma.cc/MLR9-834H>].

⁵⁴² *Id.*

⁵⁴³ *Another Jolt for Racketeers*, BROOK. DAILY EAGLE, at 18, (Apr. 9, 1937), <https://www.newspapers.com/image/52666732/> [<https://perma.cc/RMR5-PFYK>].

⁵⁴⁴ *Dewey Juries Want to Quit*, BROOK. DAILY EAGLE, at 1, (Apr. 2, 1937), <https://www.newspapers.com/image/52662232/> [<https://perma.cc/JHK4-JUCC>]; *Fight to Finish Plea of Jurors Spurs Dewey*, BROOK. DAILY EAGLE, at 2, (Apr. 3, 1937), <https://www.newspapers.com/image/52662756/> [<https://perma.cc/2CX5-6QYD>].

⁵⁴⁵ *Dewey Juries Want to Quit*, *supra* note 544, at 1.

⁵⁴⁶ *Id.*

⁵⁴⁷ *Lehman Extends Rackets, Crime Probe in N.Y. City*, PRESS & SUN-BULL., at 7, (Apr. 6, 1937), <https://www.newspapers.com/image/252687201/> [<https://perma.cc/7SL5-WQVC>].

⁵⁴⁸ *Grand Jurors Laud Dewey Racket Drive*, DAILY NEWS, at 247, (July 4, 1937), <https://www.newspapers.com/image/421564898/> [<https://perma.cc/BAX4-3PVR>].

⁵⁴⁹ Howard Whitman, *Policy Throne Too Hot, Small Fry Rule Now*, DAILY NEWS, at 12, (Feb. 7, 1938), <https://www.newspapers.com/image/416040996/> [<https://perma.cc/CUY7-4SN4>].

distributed gambling slips to players.⁵⁵⁰ Above them sat “runners” who shuttled the money and completed slips around, carrying with them “police cards” that protected them from arrest.⁵⁵¹ In case the get-out-of-jail card did not work, they had a variety of means to hide slips.⁵⁵² Men concealed slips in the heels of their shoes; women hid them in their stockings. Others simply swallowed the slips if caught.⁵⁵³ Higher up were “comptrollers,” essentially floor managers in charge of a neighborhood. At the top were the “bankers” who ran the show.⁵⁵⁴

Twelve of its kingpins, who assumed control of the operation after Dutch Schultz was killed, were indicted.⁵⁵⁵ Illegal gambling was organized crime’s biggest source of funds, and the New York City outfit had earned more than any gambling scheme in the nation’s history.⁵⁵⁶ The defendants were charged with conspiracy and operating a lottery.⁵⁵⁷ Two of those defendants pleaded guilty to their 13-count indictments,⁵⁵⁸ one flipped and became a cooperating witness,⁵⁵⁹ and a fourth called former District Attorney William Dodge as a defense witness.⁵⁶⁰ Dodge was about as successful on the defense team as he was as a prosecutor: that defendant was convicted on all counts.⁵⁶¹

There were plenty of other rackets that were probed. Based on the testimony of 1000 witnesses, managers of the poultry racket were indicted⁵⁶² and pled guilty.⁵⁶³ Five men were tried for their role in the bakery racket.⁵⁶⁴ At the end of the summer, the score was seventy-two for seventy-three on successful convictions against men brought to trial.⁵⁶⁵

In August 1937, Dewey was approached about running for district attorney of

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ *Eight Indicted Policy Racket Chiefs Hunted*, PRESS AND SUN-BULL., at 18, (July 15, 1937), <https://www.newspapers.com/image/261390879/> [<https://perma.cc/2RX5-BRZG>].

⁵⁵⁶ *Id.*; John Corsson, *Indict Dixie Davis and 11 as Policy Racket Kings*, DAILY NEWS, at 394, (July 15, 1937), <https://www.newspapers.com/image/421399209/> [<https://perma.cc/8FAC-69RL>].

⁵⁵⁷ *Nine Sought in Numbers Racket*, DUNKIRK EVENING OBSERVER, at 2, (July 15, 1937), <https://www.newspapers.com/image/56388974/> [<https://perma.cc/558R-9NMJ>].

⁵⁵⁸ *Two, Indicted with Hines in Racket, Guilty*, PRESS & SUN-BULL., at 9, (May 27, 1938), <https://www.newspapers.com/image/260026201/> [<https://perma.cc/C7K2-FZ66>].

⁵⁵⁹ Davis Freed, *Will Testify Against Hines*, STAR-GAZETTE, at 1, (July 30, 1938), <https://www.newspapers.com/image/276541653/> [<https://perma.cc/8CZA-YXP9>].

⁵⁶⁰ *Dodge Next on Hines Defense List*, STAR-GAZETTE, at 1, (Feb. 20, 1939), <https://www.newspapers.com/image/276630756/> [<https://perma.cc/2CV2-GXD6>].

⁵⁶¹ William Weer, *Convicts Him After 7 Hours Deliberation*, BROOK. DAILY EAGLE, at 1, (Feb. 26, 1939), <https://www.newspapers.com/image/52772842/> [<https://perma.cc/V2JD-2G6B>].

⁵⁶² John Crosson, *Dewey Jails Poultry Czar, Aid as Thieves*, DAILY NEWS, at 272, (Jan. 8, 1937), <https://www.newspapers.com/image/420811673/> [<https://perma.cc/Y2GB-RWLS>].

⁵⁶³ *Poultry Czar and 2 Admit Racket Guilt*, DAILY NEWS, at 184, (Aug. 3, 1937), <https://www.newspapers.com/image/421525920/> [<https://perma.cc/3YWA-98MM>].

⁵⁶⁴ *Try 3 Boro Men in Cake Racket*, BROOK. DAILY EAGLE, at 1, (June 28, 1937), <https://www.newspapers.com/image/52774486/> [<https://perma.cc/6Z3H-UJQM>].

⁵⁶⁵ *Dewey Endorsed by American Labor Unit*, DAILY MESSENGER, at 1, (Aug. 16, 1937), <https://www.newspapers.com/image/20866155/> [<https://perma.cc/9QUJ-FDAD>].

New York County.⁵⁶⁶ He acceded to the request by month's end.⁵⁶⁷ His campaign literature exhorted voters to “[f]inish the fight against crime!”⁵⁶⁸ He won the DA election in November—the first non-Tammany candidate to do so in a generation—and pledged to continue aggressively using grand juries in his new office.⁵⁶⁹ It must have been exceedingly bitter for the outgoing DA, William Dodge, for he had now been replaced by Dewey for two different jobs.

Throughout the rest of his career, Dewey never forgot the value of grand juries. He would later go on to be governor and continue to rely on them for racket-busting.⁵⁷⁰ When legislation was proposed to weaken grand juries, he retorted that they were “the bulwark of protection for the innocent and the sword of the community against wrong-doers.”⁵⁷¹

No doubt Dewey was richly rewarded for his work. He won effusive praise and was elevated from one public office to another. Less remembered are the dozens of grand jurors who served for many months on so many successor grand juries. They put their lives on hold to spend hours a day sifting through evidence and issuing indictments. In so doing, they faced great risk to themselves. There were multiple times that witnesses were attacked.⁵⁷² For their troubles, jurors were only paid \$3 a day for their services.⁵⁷³ But the lack of adoration does not diminish the contributions they made to cleaning up New York City.

CONCLUSION

We have done a one-eighty in our public conception of what a grand jury does. In 1902, one newspaper observed, the “grand jury is most effective when it is an investigating and inquiring body and is not content with mere quasi-judicial functions. The grand jury that sits in its room and waits for evidence to come in will rarely be able to return indictments in certain species of crime.”⁵⁷⁴ Today, the Federal Grand Jury Practice Manual states, “[i]n most routine cases, the grand jury’s

⁵⁶⁶ *Dewey Reply to Fusionists Waited in N.Y.*, DEMOCRAT & CHRON., at 2, (Aug. 9, 1937), <https://www.newspapers.com/image/135411357/> [<https://perma.cc/HG4F-XB7R>].

⁵⁶⁷ *Mayor's Allies Hit Jobholders*, BROOK. DAILY EAGLE, at 5, (Aug. 26, 1937), <https://www.newspapers.com/image/52695428> [<https://perma.cc/QGP4-MTER>].

⁵⁶⁸ *Elect LaGuardia and Dewey – Keep a Winning Combination!*, N.Y. AGE, at 3, (Oct. 30, 1937), <https://www.newspapers.com/image/40837131/> [<https://perma.cc/2GV7-WJLZ>].

⁵⁶⁹ *See New Prosecutor to Offer Manhattan 24-Hour Service*, DEMOCRAT & CHRON., at 4, (Nov. 4, 1937), <https://www.newspapers.com/image/136271738> [<https://perma.cc/NCS8-F4EY>].

⁵⁷⁰ CLARK, *supra* note 195, at 29.

⁵⁷¹ *Id.*

⁵⁷² *See Cafe Robbed While Owner Attends Jury*, DAILY NEWS, at 38, (Oct. 15, 1935), <https://www.newspapers.com/image/418441358/> [<https://perma.cc/E8K8-5TUX>]; *Dewey and Cops Tilt over 'Racket' Murder*, DAILY NEWS, at 472, (Sept. 15, 1936), <https://www.newspapers.com/image/418709632/> [<https://perma.cc/4KEV-J7C6>]; *Union Agent, Dewey's Aid, Shot by Pair*, DAILY NEWS, at 146, (Oct. 2, 1937), <https://www.newspapers.com/image/415463993/> [<https://perma.cc/K43P-AKXZ>].

⁵⁷³ *Dewey Silent on Strategy in Crime War*, DAILY NEWS, at 2, (Sept. 1, 1935), <https://www.newspapers.com/image/417963439/> [<https://perma.cc/R2TR-C74N>].

⁵⁷⁴ *Grand Jury Criticisms*, MINNEAPOLIS J., at 4, (Nov. 1, 1902), <https://www.newspapers.com/image/76291995/> [<https://perma.cc/4EUT-NU6R>].

role is only accusatory, not investigative.”⁵⁷⁵ Many states, too, give no role to grand juries beyond indicting.⁵⁷⁶

The idea that grand juries might be independent actors has been all but forgotten. Grand jury reforms were introduced in Congress in the 1970s, 1980s, and 2000s⁵⁷⁷ each time focusing on protecting due process rights for the accused. Though this is a worthy goal and should be included in any reform effort, it goes to show that even among reformers, the notion of prosecutorial supremacy goes unquestioned.

On the rare occasion that modern grand juries try to push against the government, the government hits back, hard. In 1989, the Rocky Flats case involved a grand jury empaneled to review a major arms manufacturer—Rockwell International.⁵⁷⁸ The government accused the company of violating environmental laws at a nuclear weapons plant the company owned.⁵⁷⁹ The government ended up settling for \$18.5 million but not bringing criminal charges.⁵⁸⁰ The grand jury accused the government of a cover-up and wanted to make its findings public.⁵⁸¹ The judge not only refused to release the report, but it bemoaned the grand jury’s insolence, writing “[i]t is with great regret that the Court has watched the Special Grand Jury fall short of the objectives of its empaneling.”⁵⁸² Worse, the FBI targeted the panel for violating secrecy rules.⁵⁸³

As the above examples show, when citizens on grand juries were entrusted with meaningful roles, they worked a tremendous good for their communities, driving out corrupt politicians and breaking up organized crime. Few would want to vest grand juries with such enormous power as they had in the past, running cities, approving legislation, and setting the tax rate. But we need not settle for one extreme or another. There is room for grand juries to play a more robust and independent role in investigations and charging without making them omnipotent.

Today, grand juries are a vestigial constitutional right. Like the human appendix, it once served a purpose, but now is a useless remnant of our past. But unlike biology, the law of grand juries does not take a thousand generations to change. We need only have the desire and the will to restore the grand jury’s role in our constitutional constellation.

⁵⁷⁵ Michael F. Buchwald, *Of the People, By the People, For the People: The Role of Special Grand Juries in Investigating Wrongdoing by Public Officials*, 5 GEO. J. L. & PUB. POL’Y 79, 96 (2007) (quoting U.S. DEP’T OF JUST., OFFICE OF LEGAL EDUC., FEDERAL GRAND JURY PRACTICE MANUAL § 11.1 (Aug. 2000)).

⁵⁷⁶ See U.S. DEP’T OF JUST., STATE COURT ORGANIZATION 2004, at 215–17 (2006).

⁵⁷⁷ See Roger A. Fairfax, Jr., *Grand Jury Innovation: Toward a Functional Makeover of the Ancient Bulwark of Liberty*, 19 WM. & MARY BILL OF RTS. J. 339, 347–49 (2010).

⁵⁷⁸ LESLIE BERGER, THE GRAND JURY 83 (2000).

⁵⁷⁹ *Id.*

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.* at 83–84.

⁵⁸² BUCHWALD, *supra* note 575, at 94 (quoting *In re Grand Jury Proceedings*, Special Grand Jury 89-2, 813 F. Supp. 1451, 1459–60 (D. Colo. 1992)).

⁵⁸³ BERGER, *supra* note 578, at 83–84.