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## THE GRAND JURY: ITS PRESENT DAY FUNCTION AND CORRELATIVE POWERS

Two recent cases have posed penetrating and challenging questions regarding the function and correlative powers of the grand jury in the American judicial system. In one case, a judge refused to accept for filing the report of a grand jury which had investigated the operations of television quiz programs.<sup>1</sup> The other case involved a taxpayer's action for a temporary injunction restraining a grand jury from proceeding with an investigation into public welfare conditions.<sup>2</sup> The conflicting views embodied in these decisions underscore the need for an evaluation of the investigative and reportorial functions of the grand jury.

The grand jury was created in the common law courts as an instrument of the crown in order to expand the power of the king over the feudal courts. Shortly thereafter, it developed into an independent body which inquired into all crimes committed or triable within its jurisdiction. In this capacity, it served a dual purpose: (1) to indict and present for trial persons believed guilty of a crime; and (2) to protect innocent persons from unwarranted prosecution.<sup>3</sup> Protection of the innocent was insured by a requirement of strict secrecy, established early in the history of the grand jury.<sup>4</sup> Later, the grand jury assumed an additional role of investigating into and reporting on public matters, encompassing such subjects as abusive market practices, horse racing, and maintenance of bridges, highways, and public property.<sup>5</sup> Misconduct of public officials was another important subject of inquiry.<sup>6</sup>

In America, the grand jury is a creature of statute in practically every state.<sup>7</sup> Although its main common law function has been preserved through statutory enactment, there remains much uncertainty in New York and other states as to its investigative and reportorial functions.<sup>8</sup>

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1. Application of Grand Jury, 19 Misc. 2d 682, 683, 193 N.Y.S.2d 553, 557 (Ct. Gen. Sess. 1959), where after almost nine months of investigation into the "way that certain television quiz programs had been conducted," the grand jury found no indictment for any substantive violation of any penal law but handed up a report embracing its findings and conclusions. Counsel for various television interests had challenged the report in advance. Consequently, on reading the report, Justice Schweitzer sealed the report pending a formal determination concerning the legal propriety of accepting it for filing. Subsequently, he refused to accept the report.

2. *Rundquist v. Leibowitz*, 22 Misc. 2d 117, 196 N.Y.S.2d 396 (Sup. Ct. 1959), *aff'd* mem., 10 App. Div. 2d 584, 196 N.Y.S.2d 612 (2d Dep't 1960). The application for an injunction was denied by Justice Cone in an opinion which held that the plaintiff failed to show such illegality in the investigation as would warrant its issuance.

3. Kuh, *The Grand Jury "Presentment": Foul Blow or Fair Play?*, 55 *Colum. L. Rev.* 1103, 1105-06 (1955).

4. Kaufman, *The Grand Jury—Its Role and Its Powers*, 17 *F.R.D.* 331, 333 (1955).

5. See 10 Holdsworth, *A History of English Law* 146-51 (1938).

6. *Id.* at 147-49.

7. For a current compilation of statutes see Comment, *The Propriety of the Grand Jury Report*, 34 *Texas L. Rev.* 746, 747 (1956).

8. Have the statutes abrogated these common law functions where they are not expressly authorized? Or have these functions been preserved by not being expressly abro-

## THE INVESTIGATIVE FUNCTION

Some states have limited the role of the grand jury by statute solely to inquiries into criminal matters.<sup>9</sup> Other states have given the grand jury broader powers so as to enable it to inquire into matters noncriminal in nature.<sup>10</sup> Still other states have left the scope of grand jury inquiry to the impaneling judge.<sup>11</sup> In New York, the grand jury of each county is charged with the statutory duty of inquiring into all crimes committed or triable within the county.<sup>12</sup> It is mandatory for the grand jury to investigate cases of persons imprisoned in a county jail on a criminal charge without being indicted, as well as cases of wilful and corrupt misconduct in office of public officials.<sup>13</sup> Inquiries into the conditions and management of public prisons are authorized but discretionary.<sup>14</sup>

There are generally two views concerning the investigatory role of the grand jury. It is argued that the function of grand jury inquiry should be to uncover

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gated? There are no New York cases in point. If there were, the inferences would easily follow. If the powers of the grand jury were confined to those authorized by statute, then it would appear that there is no power to investigate into or report on conditions of public interest not authorized by statute. If only those powers expressly abrogated by statute were denied, it would follow that the functions performed by the common law grand jury may be performed by its contemporary statutory counterpart. See *Application of Grand Jury*, 19 Misc. 2d 682, 193 N.Y.S.2d 553 (Ct. Gen. Sess. 1959); *In the Matter of Quinn*, 5 Misc. 2d 466, 166 N.Y.S.2d 418 (Ct. Gen. Sess. 1957).

9. E.g., *Ariz. R. Crim. P.* 97 (1956); *Conn. Gen. Stat.* § 54-45 (1958); *Del. Supcr. Ct. (Crim.) R.* 6 (1953); *Kan. Gen. Stat. Ann.* § 62-905 (1949); *R.I. Gen. Laws Ann.* § 8-2-34 (1956); *Tex. Code Crim. Proc. art.* 381 (1954); *Va. Code Ann.* § 19.1-155 (Supp. 1960); *W. Va. Code Ann.* § 5292 (1955).

10. E.g., *Ala. Code tit.* 30, §§ 75-81 (1958); *Ark. Stat. Ann.* § 3-251 (1956); *Ark. Stat. Ann.* § 43-907 (1947); *Cal. Pen. Code* §§ 914.1, 919, 939.1; *Fla. Stat. Ann.* § 905.16 (1944); *Ga. Code* §§ 59-301, 59-305 to -309, 59-314 to -315, 59-402 to -403, 59-405, 59-601 (1933); *Idaho Code Ann.* §§ 19-1109 to -1110 (1947); *Ind. Ann. Stat.* § 9-824 (1956); *Iowa Code Ann.* §§ 553.8, 553.14, 553-22, 771.1 to .2 (1958); *Ky. Rev. Stat. Ann.* §§ 29.225, 124.310, 216.260 (1955); *Md. Ann. Code art.* 27, § 702, art. 51, § 27 (1957); *Minn. Stat. Ann.* §§ 641.26, 628.61 (1947); *Miss. Code Ann.* §§ 1781, 1782, 1787-89 (1956); *Mo. Ann. Stat.* § 540.020(2) (1953); *Mont. Rev. Codes Ann.* §§ 94-6322, 94-6327 (1947); *Nev. Rev. Stat.* §§ 172.220, 172.300 (1957); *N.M. Stat. Ann.* § 41-5-15 (1953); *N.Y. Code Crim. Proc.* §§ 245, 253; *N.C. Gen. Stat.* §§ 9-28, 11-11 (1953); *N.D. Rev. Code* § 29-1019 (1943); *Okla. Stat. Ann. tit.* 22, § 338 (1951); *Ore. Code Ann.* §§ 13-501, 13-510 to -511 (1930); *Pa. tit.* 17, § 1371 (1930); *S.C. Code* § 38-409 (1952); *S.D. Code* §§ 34.1215 to 1216 (1939); *Tenn. Code Ann.* §§ 40-1602 to 1603 (1956); *Utah Code Ann.* § 77-19-7 (1953); *Wash. Rev. Code* § 10.28.110 (1952); *Wis. Stat. Ann.* § 255.11 (1957); *Wyo. Comp. Stat. Ann.* § 7-114 (1957).

11. E.g., *Colo. Rev. Stat. Ann.* § 78-6-5 (1953); *Ill. Ann. Stat. ch.* 78, § 18 (Smith-Hurd 1934); *La. Rev. Stat.* §§ 15:209 to :210 (1950); *Me. Rev. Stat. Ann. ch.* 143, §§ 2, 6 (1954); *Mass. Ann. Laws ch.* 277, §§ 2A, 5 (1956); *Mich. Comp. Laws* § 767.7 (1943); *Neb. Rev. Stat.* § 29-1401 (1956); *N.H. Rev. Stat. Ann.* § 600:3 (1955); *N.J. Rev. Stat.* § 2A: 73-3 (1952); *Ohio Rev. Code Ann.* § 2939.06 (Page 1953); *Vt. Stat. Ann. tit.* 12, § 5802 (1957).

12. *N.Y. Code Crim. Proc.* § 245.

13. *N.Y. Code Crim. Proc.* § 253(1), (2).

14. *N.Y. Code Crim. Proc.* § 253(3).

crimes, and not to devise more efficient methods of administration, nor to develop social policies properly within the sphere of legislative or executive investigatory bodies. It is urged, on the other hand, that the grand jury is a nonofficeholding, nonpartisan, and high caliber civic group, and therefore, an ideal instrument for performing remedial investigative work.<sup>15</sup> The prevailing view appears to be the former, for it reflects the development of the American system of checks and balances. In *Dauphin County Grand Jury Investigation Proceedings (No. 1)*,<sup>16</sup> a Pennsylvania court, viewing the grand jury as an arm of the judiciary, stated:

. . . the judiciary does not assume, nor should it be burdened with, those functions of government which are political, administrative or ministerial, nor does it intermeddle with the execution of these functions by the proper branches of government unless specifically required to do so by the Constitution.<sup>17</sup>

New York is unsettled on the question of whether it is permissible for the grand jury to inquire into noncriminal matters not expressly authorized by statute. In *In the Matter of Schiro*,<sup>18</sup> the New York Supreme Court expunged part of a grand jury report dealing with hospital conditions and held that a grand jury may not assume to act as a legislative body. However, in *Rundquist v. Leibowitz*,<sup>19</sup> the New York Supreme Court refused to enjoin a grand jury from investigating welfare conditions, saying that the "success of the separation of powers principle depends to some extent on the interaction and cooperation of the arms of government, not on their total isolation from each other."<sup>20</sup>

It can be said that the grand jury with its broad subpoena and immunity granting powers is a more effective instrument for performing investigative work than its legislative and executive counterparts.<sup>21</sup> But this does not justify an investigation into an area properly within the legislative or executive domain. In such an area, it would appear that grand jury activity is warranted in only two instances. The first is where there are no existing legislative or executive

15. The leading case supporting this view is *In the Matter of Presentment by Camden County Grand Jury*, 10 N.J. 23, 89 A.2d 416 (1952). Cf. Kuh, *op. cit. supra* note 3, at 1117-20.

16. 332 Pa. 289, 2 A.2d 783 (1938). In *McNair's Petition*, 324 Pa. 48, 187 Atl. 498 (1936), the same court held that a grand jury may not investigate public officials unless there is a definite crime charged. It cited *Alt v. State*, 83 Tex. Crim. 337, 203 S.W. 53 (1918), as authority for the rule that unless specifically authorized by the legislature, the grand jury has no power to hear any matter not leading to criminal prosecution. Cf. *Ex parte Jennings*, 91 Tex. Crim. 612, 240 S.W. 942 (1922). In *Moore v. Delancy*, 180 Misc. 844, 45 N.Y.S.2d 95 (Sup. Ct. 1943), it was held that a grand jury has no right to investigate the fiscal affairs of the legislature. For an exhaustive treatment of the area see *Annot.*, 120 A.L.R. 437 (1939); *Annot.*, 106 A.L.R. 1383 (1937); *Annot.*, 22 A.L.R. 1356 (1923).

17. 332 Pa. at 296, 2 A.2d at 787.

18. 10 Misc. 2d 552, 166 N.Y.S.2d 423 (Sup. Ct. 1957).

19. 22 Misc. 2d 117, 196 N.Y.S.2d 396 (Sup. Ct. 1959), *aff'd mem.*, 10 App. Div. 2d 584, 196 N.Y.S.2d 612 (2d Dep't 1960).

20. 22 Misc. 2d at 122, 196 N.Y.S.2d at 401.

21. See Kuh, *op. cit. supra* note 3, at 1117-20.

organs in the community to perform investigative work. Because of the necessity for public supervision, there is a need for the grand jury here as an impartial inquiring body.<sup>22</sup> The second instance is where the legislature delegates the functions of supervisory bodies to the grand jury, which then acts as a quasi administrative body.<sup>23</sup> Without such delegation, however, the grand jury has only a judicial function, and, therefore, should confine its activity to matters criminal in nature or to matters dealing with the administration of justice.

#### THE REPORTORIAL FUNCTION

Commonly termed a report, the grand jury presentment is a written statement to the impaneling court concerning matters discovered during the course of the grand jury's investigations.<sup>24</sup> Although the practice of reporting dates back to the common law, several cases decided since the turn of the century have questioned the legality of such reports.<sup>25</sup> As a result, the validity of the practice cannot be considered a matter of settled law. However, since the grand jury report is usually accepted for filing as a matter of course and is seldom challenged, only a few cases have cast doubt on its validity.

When the grand jury investigates a proper area on the reasonable belief that a crime has been committed, or pursuant to statutory directive, and when such investigation uncovers conditions of public concern which require public attention and remedial action, it may hand up a report, calling attention to these conditions and recommending appropriate measures.<sup>26</sup> Several states have statutes which authorize the report.<sup>27</sup> One state, on the other hand, expressly prohibits the practice of reporting.<sup>28</sup> While New York has no statute

22. See *In the Matter of Presentment by Camden County Grand Jury*, 10 N.J. 23, 66-67, 89 A.2d 416, 443-44 (1952). See also 10 Holdsworth, *op. cit. supra* note 5, at 146-51 (1938).

23. See, e.g., Cal. Pen. Code §§ 928, 939.1; Ga. Code §§ 59-305 to -308, 59-305 to -316, 59-401 (1933).

24. For an explanation of the terms "report" and "presentment" see *Application of Grand Jury*, 19 Misc. 2d 682, 683 n.2, 193 N.Y.S.2d 553, 557 n.2 (Ct. Gen. Sess. 1959); Kuh, *op. cit. supra* note 3, at 1103.

25. E.g., *People v. McCabe*, 148 Misc. 330, 333-34, 266 N.Y. Supp. 363, 367 (Sup. Ct. 1933). See also *Matter of Gardiner*, 31 Misc. 364, 367, 64 N.Y. Supp. 760, 762 (Ct. Gen. Sess. 1900), where the court stated: "While it may be observed that the court has tolerated rather than sanctioned such presentments of things general, yet the grand jury should never . . . present an individual in this manner. . . ." See also *Matter of Osborn*, 63 Misc. 597, 603-04, 125 N.Y. Supp. 313, 318 (Sup. Ct. 1910), where the court expresses substantially the same statements.

26. Past grand jury reports filed in New York County have treated, *inter alia*, such subjects as the activities of professional bail bondsmen, fraudulent matrimonial actions, professional boxing, fraudulent automobile claims, gambling, and the increase in crime. Memorandum of District Attorney in Support of Application to Unseal Report of the Third September, 1958 Grand Jury, p. 5; *Application of Grand Jury*, 19 Misc. 2d 682, 193 N.Y.S.2d 553 (Ct. Gen. Sess. 1959).

27. Cal. Pen. Code § 939.9; Ga. Code § 59-317 (1933); Md. Ann. Code art. 51, § 27 (1957); Minn. Stat. Ann. § 628.01 (1945); Mont. Rev. Codes Ann. § 94-6327 (1947); Wyo. Comp. Stat. Ann. § 7-98 (1957).

28. La. Rev. Stat. Ann. § 15:210 (1950).

in point, two arguments approving the legal status of the grand jury report have been given judicial recognition. The first, which is based on a necessary inference from the statutory power to inquire into the misconduct of public officials, was set forth in New York's sole appellate case on grand jury reports. In *Jones v. People*,<sup>29</sup> the court referred to the duties of inquiry imposed on the grand jury by the New York Code of Criminal Procedure and stated:

We may assume that these powers are conferred for some purpose. Official inquiry intends either official action or official report. As such powers are limited to inquiry, and the grand jury has no executive or administrative authority in the premises, the result of any inquiry must be report or statement which shall call attention to the wrong.<sup>30</sup>

This same reasoning would apparently apply to Iowa,<sup>31</sup> Minnesota,<sup>32</sup> Montana,<sup>33</sup> Utah,<sup>34</sup> and other states with similar statutes.<sup>35</sup>

The second argument approving the grand jury practice of reporting was advanced in *In the Matter of Quinn*.<sup>36</sup> There the court reasoned that since the grand jury report existed at the common law and that since the power had not been limited by colonial law, it was perpetuated by the New York constitution, which continued in force the existing common law not repugnant thereto.

Notwithstanding the validity of these arguments, the law of New York remains uncertain because of the nonexistence of stronger appellate authority. Certain principles of common agreement, however, can be derived from the lower court cases decided subsequent to *Jones v. People*. The investigation must be of a legitimate area of inquiry.<sup>37</sup> Further, where the grand jury has uncovered evidence supporting an indictment, it should return an indictment since this is its prime function.<sup>38</sup> If a report containing indictable material is returned without an indictment, the report is expungeable as a matter of law.<sup>39</sup> It has been stated, moreover, that a report handed up with an indictment should remain sealed until the completion of the trial, in order not to prejudice the

29. 101 App. Div. 55, 92 N.Y. Supp. 275 (2d Dep't), appeal dismissed, 181 N.Y. 389, 74 N.E. 226 (1905). In this case the court dealt with the question of the propriety of a report censuring certain public officials of Nassau County. There was a vigorous dissent by Justice Woodward who found no authority for a report. 101 App. Div. 55, 59, 92 N.Y. Supp. 275, 277.

30. 101 App. Div. at 57, 92 N.Y. Supp. at 276.

31. Iowa Code Ann. § 771.2 (1958).

32. Minn. Stat. Ann. § 628.61 (1947).

33. Mont. Rev. Codes Ann. § 94-6322 (1947).

34. Utah Code Ann. § 77-19-7 (1953).

35. See note 7 supra.

36. 5 Misc. 2d 466, 166 N.Y.S.2d 418 (Ct. Gen. Sess. 1957).

37. *In the Matter of Schiro*, 10 Misc. 2d 552, 166 N.Y.S.2d 423 (Sup. Ct. 1957).

38. *Jones v. People*, 101 App. Div. 55, 57, 92 N.Y. Supp. 275, 276 (2d Dep't 1905) (dictum).

39. *In the Matter of Funston*, 133 Misc. 620, 233 N.Y. Supp. 81 (Sup. Ct. 1929). Cf. *In the Matter of Wilcox*, 153 Misc. 761, 276 N.Y. Supp. 117 (Sup. Ct. 1934).

defendant.<sup>40</sup> Finally, the report should issue from the grand jury as a whole,<sup>41</sup> after a fair inquiry,<sup>42</sup> and should be based upon facts rather than unsupported allegations.<sup>43</sup>

### *Reports Censuring Individuals*

Problems arise when an individual is censured by a grand jury report and is not indicted. Most courts look with disfavor upon such a report.<sup>44</sup> Where no indictment is returned, the function of the grand jury is to protect the innocent from prosecution and, by its rule of secrecy, to preserve the individual's reputation. A report which censures an individual is violative of the secrecy principle, and it affords no opportunity to the individual censured to clear his name in court. Also, when an individual is censured, the grand jury is, in effect, substituting its own subjective moral standards for the recognized norms of conduct prescribed by the legislature. Since the grand jury has no statutory authorization to investigate the noncriminal activities of private persons, the report itself, so far as it relates to noncriminal matters, is unlawful. Where private persons are involved, the function of the grand jury ceases when it finds that no crime has been committed.

A different problem is presented with respect to the censure of a public official for misconduct in office. Here, the states appear to be in conflict.<sup>45</sup> Although the law of New York is uncertain, such a report was upheld by the majority in *Jones v. People* and in cases following the reasoning of that decision.<sup>46</sup> The underlying rationale of these cases was that grand jury inquiry

40. See *In the Matter of Clay*, 7 Misc. 2d 84, 91, 166 N.Y.S.2d 534, 542 (Sup. Ct. 1957) (dictum).

41. *In re Woodbury*, 155 N.Y. Supp. 851 (Sup. Ct. 1915) (dictum).

42. See *In the Matter of Funston*, 133 Misc. 620, 233 N.Y. Supp. 81 (Sup. Ct. 1929).

43. See *In the Matter of Crosby*, 126 Misc. 250, 213 N.Y. Supp. 86 (Sup. Ct. 1925); *In the Matter of Lundy*, 208 Misc. 833, 839-40, 148 N.Y.S.2d 658, 663-64 (Queens County Ct. 1955).

44. *Application of Grand Jury*, 19 Misc. 2d 682, 193 N.Y.S.2d 553 (Ct. Gen. Sess. 1959); *In the Matter of Healy*, 161 Misc. 582, 293 N.Y. Supp. 584 (Queens County Ct. 1937).

45. For cases which permit such reports, see *Irwin v. Murphy*, 129 Cal. App. 713, 19 P.2d 292 (Dist. Ct. App. 1933) (boxing commissioner); *Ryon v. Shaw*, 77 So. 2d 455 (Fla. 1955) (school supervisor); *Owens v. State*, 59 So. 2d 254 (Fla. 1952) (town council). But cf. *State ex rel. Brautigam v. Interim Report of Grand Jury*, 93 So. 2d 99 (Fla. 1957) (circuit court judge and three attorneys). See *In re Presentment by Camden Grand Jury*, 10 N.J. 23, 89 A.2d 416 (1952) (sheriff).

The following states prohibit such reports. *Ex parte Robinson*, 231 Ala. 503, 165 So. 582 (1936) (city commissioner); *Coons v. State*, 191 Ind. 580, 134 N.E. 194 (1922) (circuit court judge); *In re Report of Grand Jury*, 152 Md. 616, 137 Atl. 370 (1927) (superioring engineer of public improvement commission); *Bennett v. Kalamazoo Circuit Judge*, 183 Mich. 200, 150 N.W. 141 (1914) (prosecuting attorney); *State ex rel. Strong v. District Court*, 216 Minn. 345, 12 N.W.2d 776 (1944) (public relations counsel and a teacher's group); *In re Report of Grand Jury*, 74 Nev. 80, 322 P.2d 1079 (1953) (assemblyman); *State v. Bramlett*, 166 S.C. 323, 164 S.E. 873 (1932) (sheriff); *In re Report of Grand Jury*, 123 Utah 458, 260 P.2d 521 (1953) (state welfare commissioner); *Report of Grand Jury*, 204 Wis. 409, 235 N.W. 789 (1931) (city attorney).

46. See *In the Matter of Schiro*, 10 Misc. 2d 552, 166 N.Y.S.2d 423 (Sup. Ct. 1957);

into the misconduct of public officials is a statutory duty, and, therefore, such reports are not only proper but impliedly authorized. Lower court cases in New York, however, are in disagreement on this point. They are influenced by the vigorous dissent of Justice Woodward in *Jones v. People*.<sup>47</sup> Similarly, courts in other jurisdictions have been influenced by this dissent.<sup>48</sup>

A view has been expressed that as well as public officials private persons engaged in an activity affected with a public interest should be subject to critical grand jury reports.<sup>49</sup> However, in *Application of Grand Jury*, Justice Schweitzer took no notice of this view when presented with a report concerning the workings of television quiz programs.<sup>50</sup> Rather, he treated the report as involving private individuals in a private enterprise. As a result, he ordered the report sealed.

Notwithstanding authorities to the contrary, the present day grand jury would seem to have a reportorial function similar to its common law ancestor. When properly made, the grand jury report performs a useful and laudatory function. In ruling on the propriety, courts should be guided by principles of common sense, thus insuring protection to the innocent while preserving the right to report.

#### CONCLUSION

The lack of appellate authority in New York has engendered many different views regarding grand jury reports. Attention has been called to the fact that there is no clear cut right or procedure to appeal a decision of a lower court permitting or expunging a grand jury report. The want of legislative direction has left the matters to the discretion of the judges. This may be the best policy. If it is, it should be written into the law. If it is not, it is incumbent upon the legislature to declare its intent as to when reports are proper, what they should contain, whom they may criticize, and what procedure is to be followed, if any, in reviewing a lower court's determination.

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In the Matter of Quinn, 5 Misc. 2d 466, 166 N.Y.S.2d 418 (Ct. Gen. Sess. 1957); In the Matter of Crosby, 126 Misc. 250, 213 N.Y. Supp. 86 (Sup. Ct. 1925); In the Matter of Lundy, 208 Misc. 833, 148 N.Y.S.2d 658 (Queens County Ct. 1955); In the Matter of Healy, 161 Misc. 582, 293 N.Y. Supp. 584 (Queens County Ct. 1937).

47. See, e.g., In the Matter of Clay, 7 Misc. 2d 84, 166 N.Y.S.2d 534 (Sup. Ct. 1957); In the Matter of Funston, 133 Misc. 620, 233 N.Y. Supp. 81 (Sup. Ct. 1929); In the Matter of Wilcox, 153 Misc. 761, 276 N.Y. Supp. 117 (Sup. Ct. 1934); Matter of Osborne, 68 Misc. 597, 125 N.Y. Supp. 313 (Sup. Ct. 1910).

48. See, e.g., *Ex parte Robinson*, 231 Ala. 503, 505, 165 So. 582, 583 (1936); In re Report of Grand Jury, 123 Utah 458, 260 P.2d 521 (1953).

49. See Kuh, *op. cit. supra* note 3, at 1123. Apparently people in the television industry would come under this heading. See U.S. Atty. Gen. Report to President on Deceptive Practices in Broadcasting Media, p. 25 (1959), which cites from *McIntire v. William Penn. Broadcasting Co.*, 151 F.2d 597, 599 (3d Cir. 1945): "It is plain . . . that a radio broadcasting station must operate in the public interest and must be deemed to be a 'trustee' for the public."

50. *Application of Grand Jury*, 19 Misc. 2d 682, 193 N.Y.S.2d 553 (Ct. Gen. Sess. 1959), 35 Notre Dame Law. 450 (1960).