tion. It has been contended that marriage is of such serious import to society that the law should not permit people to toy with it or to use it as a contrivance for deceptive schemes. This is the position taken by a number of civil law jurisdictions. Under this system, the parties are absolutely bound to the marital status if a ceremony has taken place. The opposite result, found in the canon law, is based upon the argument that the high position of dignity and importance which should be accorded to the sacrament of marriage will not tolerate the enforcement of the marital rights and duties when the parties did not intend marriage. Moreover, it has been said that, instead of becoming a valuable asset to society, these marriages will become a detriment by preventing the parties from entering into more satisfactory unions; and that perpetuating such marriages will prove injurious to the stability of the family.

\[\text{\textsuperscript{41}}\text{ E.g., German Civil Code, BGB \$ 1323, which, because of the special nature of the marriage relation, specifically exempts sham marriage contracts from simulated transactions, void under BGB \$ 117.}\]

\[\text{\textsuperscript{42}}\text{See note 29 supra.}\]

METHODS OF INVESTIGATING MUNICIPAL CORRUPTION

Every time I attempted to trace to its sources the political corruption of a city ring, the stream of pollution branched off in the most unexpected directions and spread out in a network of veins and arteries so complex that hardly any part of the body politic seemed clear of it. It flowed out of the majority party into the minority; out of politics into vice and crime; out of business into politics, and back into business; from the boss, down through the police to the prostitute, and up through the practice of law into the courts; and big throbbing arteries ran out through the country over the State to the Nation—and back. No wonder cities can't get municipal reform!

—Lincoln Steffens*

A full-scale attack on municipal crime and corruption involves at least three aspects: (1) investigation to find the facts; (2) punishment of the guilty parties by criminal prosecution or by removal from office; and (3) action—legislative, political, or otherwise—to prevent recurrence of the offenses.

It is the purpose of this comment to survey the various investigative, fact-finding agencies that have been employed to deal with problems of corruption in our cities. As bearing on the effectiveness of these agencies, the following points will be considered: the range of subject matter which the agency can investigate; the time and money at the agency's disposal; the freedom from outside control with which the agency can determine its course of inquiry; the power of the agency to hold hearings, and subpoena witnesses and records; and the availability of sanctions against dishonest testimony. The degree to which the agency can utilize the facts found to punish guilty parties and to prevent recurrence of the offenses will also be discussed. A detailed analysis of the legal

problems raised by the operation of these agencies is beyond the scope of this comment.

Federal Legislative Committee

The variety of subject matter open to investigation by a federal legislative committee will be defined in terms of both legislative authorization and constitutional limitations. The scope of the legislative authorization can be quite broad. For example, the resolution establishing the Special Committee to Investigate Organized Crime in Interstate Commerce (the so-called "Kefauver Committee") empowered the Committee to investigate "whether organized crime utilizes the facilities of interstate commerce or otherwise operates in interstate commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur. . . ." The constitutional limitation apparently implicit in this resolution would bar the Committee from investigating criminal transactions of a purely "local" nature. However, it would be difficult for the Committee to determine whether a given transaction was or was not connected with interstate commerce without first investigating the transaction. Thus, at least in cases where the Committee had reasonable cause to believe that the transaction had an interstate aspect, investigation would appear warranted. Given the fact that modern city crime often is organized on a large scale, the Committee would therefore have had the power to investigate those aspects of municipal corruption which involve the violation of state and federal statutes and have a colorable connection with interstate commerce.

The empowering resolution generally specifies a time limitation on committee operation and an appropriation of funds which may be used. An interstate investigation such as was undertaken by the Kefauver Committee could be ex-


2 The scope of the empowering statute is rarely used to limit the subject-matter of a congressional inquiry. For a recent case in which the empowering resolution was construed narrowly so as to limit the scope of inquiry, see United States v. Rumely, 345 U.S. 41 (1953), aff'g 197 F. 2d 166 (App. D.C., 1952). The Court of Appeals decision is noted in 20 Univ. Chi. L. Rev. 593 (1953).

3 Cf. the doctrine that while statutes infringing upon the First Amendment are invalidated unless there is a showing of "clear and present danger," investigations are upheld where the danger "is reasonably regarded as potential." Barsky v. United States, 167 F. 2d 241 (App. D.C., 1948), cert. denied, 334 U.S. 843 (1948).


5 44 Stat. 162 (1926), 2 U.S.C.A. § 196 (Supp., 1952), requires Senate resolutions to limit explicitly the costs of investigations. The Kefauver Committee was originally granted $150,000, and ten months in which to complete its work. Sen. Res. 202, 81st Cong. 2d Sess. (1950). The time limit was, however, extended. Kefauver Report, p. 21.
pected to require a considerable amount of time and money, but both of these factors may be subject to political influence within Congress.

Once the resolution is passed, decisions as to how committee resources are to be expended will be made by the committee members within the framework of statutes governing committee expenses. Salaries of classified committee employees are limited by statute, but Congress may vote to establish special salaries for particular employees of a committee. This will permit the employment of prominent attorneys and investigators to assist in the committee's work. The political independence of the committee may be measured in terms of the balance of party interests between members of the committee. The empowering resolution may leave the choice of members to the Speaker of the House or the President of the Senate or to the party leaders, and it may require that the members be drawn from certain standing committees or that a certain number belong to the minority party. Although making the committee bipartisan may tend to prevent a "whitewash" of an investigation, it may also lead to much internal dissension and consequent loss of effectiveness.

The Kefauver Committee resolution partially defined the committee's mode of operations by granting it the power to hold public and private hearings at the discretion of the committee or its chairman. The committee was also granted the power to subpoena persons to testify or to deliver up records. A federal statute makes it a misdemeanor for a subpoenaed person to refuse to appear, produce papers or answer any pertinent question. The subpoena power does

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6 E.g., the Kefauver Committee visited fourteen cities and heard more than six hundred witnesses. Ibid.


8 E.g., the Kefauver Committee was permitted to pay up to $17,500 per year for its Chief Counsel and up to $12,500 per year for associate counsel. S.J. Res. 176, 81st Cong. 2d Sess. (1950).

9 The Kefauver Committee resolution requires that the members be chosen from the Committee on Interstate and Foreign Commerce or the Committee on the Judiciary, and that at least two of the five members belong to the minority party. Sen. Res. 202, 81st Cong. 2d Sess. (1950). The resolution empowers the President of the Senate to select the members of the Committee, and the entire resolution was nearly defeated following the defeat of an amendment which would have empowered the minority party leaders to select the minority members. 96 Cong. Rec. 6,245 (1950).

10 See, e.g., the account of the activities of the bipartisan Seabury Committee, a committee of the New York State Legislature. Northrop, The Insolence of Office 285 et seq. (1932).

11 Sen. Res. 202, 81st Cong. 2d Sess. (1950), by declaring a quorum to be a majority of the committee or subcommittee, and empowering one-man subcommittees to hold hearings, excludes the possibility that a witness may refuse to obey a subpoena on the grounds that no quorum was present at the hearing. Cf. Christoffel v. United States, 338 U.S. 84 (1949).

12 11 Stat. 155 (1857), 2 U.S.C.A. §§ 192, 194 (1927). This penalty is not the same thing as "contempt of Congress," and prosecution under this statute does not preclude citation for
not appear to extend to forcing the executive branch of government to disclose tax records and other official documents, although requests may be compiled with without subpoena. Despite this misdemeanor statute and despite another which declares that a witness is not excused from replying where an answer would "tend to disgrace him or otherwise render him infamous," a witness can refuse to answer where his answer might tend to incriminate him. This constitutional privilege against self-incrimination does not ordinarily extend to answers which might result in only state rather than federal prosecution, although a recent District Court case has extended the privilege to instances in which the object of the committee is, in part, to investigate violations of state law. The privilege can be claimed in refusing to deliver many subpoenaed documents, but does not apply to corporate documents, documents of unincorpo-


14 E.g., Exec. Order 9281, 7 Fed. Reg. 10,355 (1942), permitting the Dies Committee to see such records; Exec. Order 10132, 15 Fed. Reg. 3,963 (1950), permitting the Kefauver Committee to see such records.


16 U.S. Const. Amend. 5. See 8 Wigmore, Evidence § 2252 (3d ed., 1940). See also United States v. Emspak, 95 F. Supp. 1012 (D. C., 1951): While the privilege applies to testimony before congressional committees, questions not incriminating on their face put upon the witness a burden of showing substantial reason and belief that the answer would tend to incriminate.


18 United States v. Di Carlo, 102 F. Supp. 597 (N.D. Ohio, 1952). (It is not clear whether the privilege involved here is under the federal or state constitution.) There would be, however, no grounds for the privilege if the statute of limitations had run on the state crime. United States v. Auippa, 102 F. Supp. 609 (N.D. Ohio, 1952).

19 E.g., copies of a tax return might be subject to protection as "pre-existing documents." See 8 Wigmore, Evidence § 2294 (3d ed., 1940); Morgan, The Privilege Against Self-Incrimination, 34 Minn. L. Rev. 1, 34 (1949); Corwin, The Supreme Court's Construction of the Self-Incrimination Clause, 29 Mich. L. Rev. 1, 13 et seq. (1930). Wigmore's rationale for extending protection to pre-existing documents is that a person served with process is thereby treated as a witness and is liable at any time to be compelled to testify as to the authenticity of the documents produced. It has been pointed out, however, that the prosecution could be required to authenticate the documents without calling upon the person from whom they were subpoenaed. See Meltzer, Required Records, The McCarran Act, and the Privilege Against Self-Incrimination, 18 Univ. Chi. L. Rev. 687, 699-701. Professor Meltzer suggests that the

rated associations, or records required to be kept by law. The privilege could not be invoked at all if the witnesses were assured immunity from all future prosecution arising from the testimony in question, but the present federal immunity statute is inadequate for this purpose and was never used by the Kefauver Committee. A new statute has been proposed.

The witness may refuse to answer a question which is irrelevant to the subject of inquiry, but the standard of relevance in a crime investigation is apt to be quite broad.

Although there may be no legal penalties for invoking the privilege against self-incrimination, in the popular mind its use often appears to be a tacit

[footnote 19 continued]

rationale may involve an "unwillingness to command the impossible" in that "[a] party directed to produce an incriminating document would be tempted to destroy, conceal, or withhold it rather than incriminate himself." Ibid., at 701.


Shapiro v. United States, 335 U.S. 1 (1948) (records required by the OPA).

8 Wigmore, Evidence § 2283 (3d ed., 1940). Counselman v. Hitchcock, 142 U.S. 547 (1892), has established that a statute which merely forbids the use of testimony in a later criminal proceeding is not sufficient protection to the witness. As to whether the witness would have to be granted immunity from future state prosecution, cf. authorities cited note 17 supra. There would be, however, no need to grant immunity if the information to be gained dealt solely with the acts of another, since such information is not protected by the privilege against self-incrimination. See 8 Wigmore, Evidence § 2259 (3d ed., 1940).


Sen. 1570, 82d Cong. 1st Sess. (1951) would allow for a witness to be granted immunity by a two-thirds vote of the congressional committee so long as at least one member of the minority party votes for the immunity. Sen. 1747, 82d Cong. 1st Sess. (1951) would allow the Attorney General to grant immunity from future prosecution where, in his judgment, such immunity is necessary for the public interest. Both of these bills have been endorsed by the American Bar Association's Commission on Organized Crime, Organized Crime and Law Enforcement 59 (1952), and the Kefauver Committee recommended similar legislation. Kefauver Report, p. 17.

"If the subject under scrutiny may have any possible relevancy and materiality, no matter how remote, to some possible legislation, it is within the power of the Congress to investigate the matter. Moreover, the relevancy and materiality of the subject matter must be presumed." United States v. Bryan, 72 F. Supp. 58, 61 (D. D.C., 1947), rev'd, 174 F. 2d 525 (App. D.C., 1949), rev'd, 339 U.S. 323 (1950). For examples of the extremes in space, time, and activity, see the references to the Mafia, the pre-Capone gangs, and the infiltration of racketeers into legitimate businesses in the Kefauver Report.

Wigmore discusses at length the problem of whether an inference may be drawn from a witness's exercise of his privilege against self-incrimination. 8 Wigmore, Evidence §§ 2272, 2272a (3d ed., 1940). Most states have statutes prohibiting the drawing of inferences, but the number which permit the inference is gradually being enlarged. See detailed references to statutes, ibid., at p. 412 n. 2. The question is particularly perplexing when compared with the rule which permits the drawing of inferences from the failure to produce evidence other than the party's own testimony. Ibid., at § 2273.
admission of guilt, and a witness at a public hearing may be tempted to lie rather than claim the privilege. One of the forces against lying is fear of prosecution under the federal perjury statute. 29 The procedural requirements of this statute have been attacked as making it too difficult to enforce, and a new statute has been proposed. 30

**State Legislative Committee**

The subjects which a state legislative committee may investigate will be determined by both the federal and state constitutions and by the empowering resolution. Since a city is in a sense, an agency of the state, 31 it is not surprising that the state legislature would want to examine carefully the city's criminal activity and administration. An investigation of a private party or organization may be considered a judicial function, conflicting with the "separation of powers" implicit in state constitutions. 32 The investigation of municipal officials qua officials, however, is a different matter, 33 and a state undoubtedly has the right to investigate the administration of state laws in a municipality.

The grant of time and money is determined by the legislature, 34 just as is the case with the congressional committees. The committee usually has the power to hire its counsel. 35 Salary limitations depend on the laws of the particular state. 36

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30 The old law requires that the indictment charge which of the two contradictory statements made under oath is false. See United States v. Buckner, 118 F. 2d 468, 470 (C.A. 2d, 1941). Proof must include the testimony of two independent witnesses—or one, with corroborating circumstances. Weiler v. United States, 323 U.S. 606 (1945). The proposed law, H.R. 2260, 82d Cong. 1st Sess. (1951), and Sen. 1625, 82d Cong. 1st Sess. (1951), would define perjury as the giving under oath or affirmation within a period of three years, willful contradictory statements on a material matter either in proceedings before a grand jury or during the trial of a case, with no requirement of having to prove which is false. H.R. 2260 is supported wholeheartedly by the Kefauver Committee, Kefauver Report, p. 17, but the American Bar Association's Commission on Organized Crime has suggested that the law be amended to cover testimony before "a competent tribunal, officer or person," as is the case with the present law. ABA, op. cit. supra note 25, at 57.

31 The dual role of the municipal corporation as a regulator of matters internal to the district and as an instrumentality of the state is spelled out in 1 McQuillin, Municipal Corporations §1.103 (3d ed., 1949).


33 See Attorney General v. Brissenden, 271 Mass. 172, 171 N.E. 82 (1930), an investigation by the state legislature of the activities of a Boston policeman during the time of his employment.

34 In New York, the state constitution requires appropriations of money for legislative activities. N.Y. Const. Art. 7, § 7. The expenses of committees for hearings outside of the state capital are handled automatically by the comptroller, but the propriety of expenditures is determined by the committee chairman, and not the comptroller. N.Y. Legislative Law (McKinney, 1952) § 63, as interpreted in [1916] Ops. N.Y. Att'y Gen. 154.

35 The Attorney General may be authorized, as in New York, to "have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel. . . ." N.Y. Executive Law (McKinney, 1951) § 63(1), but this does not necessarily preclude the hiring of independent counsel for the committee. See the account of the hiring of Judge Seabury in Northrop, op. cit. supra note 10, at 281.

Makeup of the committee is determined by the resolution. It should be remembered with regard to all of these special grants that some members of a state legislature may be closely allied with political—and sometimes criminal—interests in the state's larger municipalities.

The power to hold hearings and to issue subpoenas, together with power to enforce the subpoenas is often expressly granted by the legislature. The privilege against self-incrimination is available in legislative investigations in all states, but most states have immunity statutes of various types. A plea by a witness that his answer might tend to disgrace him or render him infamous would not justify refusal to answer, since this is neither "self-incrimination" nor an invasion of privacy in the sense of an unreasonable search and seizure.

Perjury statutes vary from state to state. A Model Act for the states has been proposed along the lines of the proposed federal change.

37 E.g., Ill. Rev. Stat. (1951) c. 63, § 6; N.Y. Legislative Law (McKinney, 1952) § 60 (right to compel testimony), § 61 (power of standing committees to appoint subcommittees to make inquiries or investigations), § 62-a (power to issue subpoenas through process of N.Y. Civil Practice Act (McKinney, 1942) § 405).


All but two states, Iowa and New Jersey, have constitutional provisions similar to the Fifth Amendment, and in these two states, the privilege against self-incrimination is part of the common law. State v. Height, 117 Iowa 650, 91 N.W. 935 (1902); State v. Zdanowicz, 69 N.J.L. 619, 622, 55 Atl. 743, 744 (1903). The wording differs widely, but the privilege is generally applicable to a legislative investigation. See 8 Wigmore, Evidence § 2252 et seq. (3d ed., 1940).

The statutes are cited in full in 8 Wigmore, Evidence § 2281 (3d ed., 1940). The rule of Counselman v. Hitchcock, 142 U.S. 547 (1892), is applied in most states.


40 8 Wigmore, Evidence § 2255 (3d ed., 1940).

41 "Neither the literal language of the [Fourth] Amendment nor the history which led to its adoption supports the idea that the Amendment limits the use of judicially enforceable subpoenas which require testimony or the production of designated books and records." Davis, Administrative Law 105-6 (1951).

42 E.g., Ill. Rev. Stat. (1951) c. 38, § 473. It is questionable whether this statute applies to legislative investigations since it refers to testimony "in any judicial proceeding or in any other matter where by law an oath or affirmation is required. ..." Cf. N.Y. Penal Law (McKinney, 1944) § 1620a, which applies to "an occasion in which an oath or affirmation is required or may be lawfully administered." In Illinois, the matter falsely sworn to must be material to the point in question, and the offense is a felony.

New York has two degrees of perjury. First degree perjury involves false swearing on a matter which is material. Ibid. Second degree perjury is identical except that it may involve a matter which is not material to the point in question. Ibid., at § 1620b; People v. Samuels, 259 App. Div. 167, 18 N.Y.S. 2d 532 (1940), aff'd, 284 N.Y. 410, 31 N.E. 2d 753 (1941). Contrary written statements under oath are presumptive evidence of perjury. N.Y. Penal Law (McKinney, 1944) § 1627; People v. Glass, 191 App. Div. 483, 181 N.Y. Supp. 547 (1920). An indictment for second degree perjury may allege the making of contradictory statements and it is not necessary to prove which is true. N.Y. Penal Law (McKinney, 1944) § 1627a.

43 The Model Act on Perjury proposed by the Council of State Governments and endorsed by the National Conference of Commissioners on Uniform State Laws explicitly covers
Municipal Legislative Committee

The subjects which may be investigated by municipal legislative bodies are limited by statutes of the state legislature, which has created the municipal corporation. If investigation is considered an inherent part of the legislative function, then a city council has the power to investigate all matters on which it can pass ordinances, and these matters are determined by its charter. The more common view, however, is that grants of power to a municipal corporation by the state legislature must be construed strictly, and, therefore, a city council may not conduct an investigation into law enforcement or municipal corruption without a specific empowering statute. A typical statute of this kind authorizes the investigation of “the enforcement of the municipal ordinances, rules and regulations and the action, conduct and efficiency of all officers, agents and employees of the municipality.” In determining the validity of an ordinance or resolution of the city council, pursuant to this statute, the statute itself must be strictly construed. The above statute may, for example, limit the investigation of the “conduct and efficiency of all officials, agents and employees” to conduct regarding municipal ordinances and not violations of state criminal statutes on bribery and other crimes. If the municipal courts are set up and regulated entirely by state statute, it may be contended that the council has no right to investigate those courts. But matters on which ordinances can be passed, such as

hearings and investigations. The Act contains what may be a dangerous flaw in that the requirement that the statement be material to the proceeding is optional with the enacting state. There would be no requirement to prove which statement was false, and no requirement that two witnesses testify. To create an easily enforced criminal action for the punishment of trivial falsehoods may be grossly unfair to the witness even if the degree of effect of the falsehood is considered in mitigation, as is suggested in this Model Statute. Council of State Governments, Suggested State Legislation—1953, 91 (1952). Recently, a perjury act similar to the Model Statute (but including a requirement of materiality) was passed by the Illinois legislature following the recommendation of the Chicago Crime Commission. Ill. S.B. 96, 68th Gen. Assembly (1953).

46 The description of inherent powers and implied powers of municipal corporations set forth in 2 McQuillin, op. cit. supra note 31, at §§ 10.11, 10.12, leads to the conclusion that a city should have the powers necessary to fulfill the objects and purposes for which the municipality was organized. Cf. McGrain v. Daugherty, 273 U.S. 134, 174 (1927): “[T]he power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.”

47 2 McQuillin, op. cit. supra note 31, at §§ 10.18, 10.09.

48 Ill. Rev. Stat. (1951) c. 24, § 23-111. Cf. N.Y. City Charter (1943) § 43, giving the City Council power to investigate “any matters relating to the property, affairs, or government of the city.”

49 This argument was advanced by the Corporation Counsel of Chicago in analyzing the powers of the Chicago City Council’s Emergency Committee on Crime. In a letter to the Hon. Reginald Du Bois, dated Feb. 18, 1952, the Corporation Counsel maintained (1) that the City Council had no legislative power over the Municipal Courts, and (2) that “separation of powers” prevented the legislative from interfering with or examining the judicial branch of government. The first contention appears to have overlooked Ill. Rev. Stat. (1951) c. 37,
as police administration, and the regulation of gambling, narcotics, and prostitution, are probably within the province of typical council investigation.\textsuperscript{50}

Time and money allotments are at the discretion of the council members, many of whom may be in the thick of the corruption which is to be investigated.\textsuperscript{51} The hiring of independent counsel may be precluded by the existence of a corporation counsel if his duty—determined by charter or ordinance—is to "conduct all the law business of the city."\textsuperscript{52} Even if independent counsel are retained, the corporation counsel may, in advising other municipal officers of their rights, affect the operations of the committee.\textsuperscript{53} Composition of the municipal legislative committee is subject to the same political considerations which are present in the case of federal and state committees.

Under the strict construction rule, the municipal legislative committee has no power to hold hearings or to issue and enforce subpoenas unless the powers are expressly granted by the state legislature. Whether or not the committee can subpoena private persons will depend on the scope of the empowering resolution.\textsuperscript{54} In addition, the effectiveness of the subpoena power, even when granted, may be impaired if the grant is to the "corporate authority."\textsuperscript{55} If the city council

\textsuperscript{50}§ 363, which gives the City Council power to increase the salaries of Municipal Court judges. See also Chicago Municipal Code (1939) § 25-5. With regard to the second contention, the argument might be advanced that on a municipal level there may be no "separation of powers." Matter of LaGuardia v. Smith, 288 N.Y. 1, 7, 41 N.E. 2d 153, 156 (1942).

\textsuperscript{51}E.g., Chicago Municipal Code (1939) § 11-1 (power to expand the police department), § 97 (narcotics), § 191 (gambling), § 192 (prostitution).

\textsuperscript{52}E.g., in a lengthy and hectic meeting of the Chicago City Council, a budget was passed which cut the requested appropriation for the Emergency Committee on Crime and added large sums to the patronage-ridden Sewer Department. Chicago Sun-Times, p. 1 (Dec. 23, 1952).

\textsuperscript{53}Chicago Municipal Code (1939) § 6-2(a). This ordinance is, of course, subject to change by a vote of the City Council, since the statutory powers of the office are not so broad. Ill. Rev. Stat. (1951) c. 24, § 21-11. The power of a city council to hire independent counsel for its investigations has been debated. Even where a corporation counsel with broad powers exists, courts have felt that he is put into an anomalous position and that a truly independent investigation requires a completely disinterested counsel. Judson v. City of Niagara Falls, 140 App. Div. 62, 124 N.Y. Supp. 282 (1910); Barry v. City of New York, 175 Misc. 712, 25 N.Y.S. 2d 27 (S. Ct., 1941). See 10 McQuilin, op. cit. supra note 31, at § 29.12.

\textsuperscript{54}E.g., John J. Mortimer, Corporation Counsel of Chicago, maintained in his letter, op. cit. supra note 49, that no independent counsel could be employed by the Emergency Committee on Crime. Although the point was never conclusively tested, he continued to pass judgments as to the powers of other city officials with reference to the committee. See Letter to Hon. Timothy O'Connor, Commissioner of Police, June 2, 1952, stating that the Commissioner had no power to compel policemen to disclose their incomes to the Committee. Cf. Chicago Daily News, p. 1, col. 1 (Jan. 23, 1953), announcing a ruling of the Corporation Counsel that the Commissioner of Police can compel policemen to disclose their incomes to the Committee.


\textsuperscript{56}E.g., Ill. Rev. Stat. (1951), c. 24, § 23-111.
is the corporate authority, and no power is granted to delegate the subpoena power to a committee, the strict construction rule might require that subpoenas be issued at a full meeting of the city council, increasing the possibility that witnesses would learn of their subpoena in time to leave the jurisdiction.

The witness may claim his privilege against self-incrimination, and the city council is in no position to grant immunity against state prosecution since this involves a limitation on the activity of the state’s attorney or district attorney who are answerable only to state authorities. It should be pointed out, however, that despite the fact that the privilege is available to policemen and other public officials, courts have upheld the dismissal of officers who invoke the privilege. The courts have reasoned that nondisclosure on the ground of self-incrimination is inimical to the position of trust which such people have assumed.

Since the investigation is authorized by the state, state perjury statutes which apply to state legislative investigations presumably would apply as well to the proceedings of municipal legislative investigations.

**Grand Juries**

Unless otherwise authorized by statute, the investigations of grand juries are limited to criminal matters. The subjects which can be examined by a grand jury have been said to depend upon the jurisdiction of the court in which it is impaneled and for which it is to make its inquiry. Thus, a federal grand jury would be able to examine federal crimes, such as allegations of federal tax vio-

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65 E.g., ibid., at § 1-2(2)(a).

67 Immunity may be granted only by statute (see note 40 supra) or by the agreement of a judge of a state court (see note 95 infra). A New York statute granting immunity to witnesses in conspiracy investigations was held to be applicable to a municipal legislative investigation. People v. Grossman, 262 N.Y. Supp. 66 (County Ct., 1932).

56 The cases on this point have arisen with regard to grand jury proceedings. Christal v. Police Comm’n of San Francisco, 33 Cal. App. 2d 564, 92 P. 2d 416 (1939). Cf. Souder v. Philadelphia, 305 Pa. 1, 156 Atl. 255 (1931). But it would seem that the reasoning should apply to legislative and executive investigations as well. Policemen may be discharged for invoking the privilege to avoid testifying as to off-duty activities as well as official duties. Moretti v. Civil Service Board of the Chicago Park Dist. (Cir. Ct. of Cook County, 1952), reported in 34 Chicago Bar Rec. 77 (1953). See note 152 infra; Denying the Privilege against Self-Incrimination to Public Officers, 64 Harv. L. Rev. 987 (1951); Dismissal of Police Officers for Exercising Privilege Against Self Incrimination, 38 J. Crim. L. 613 (1948). Cf. La. Rev. Stat. (1950), 38:2182, declaring that persons or corporations refusing to testify or render information requested by investigating authorities in connection with state contracts are ineligible to hold contracts with the state.

69 Ex parte Jennings, 91 Tex. Crim. 612, 240 S.W. 942 (1922), and cases collected in Matters within Investigating Powers of Grand Jury, 22 A.L.R. 1356, 1366 (1923); McNair’s Petition, 324 Pa. 48, 187 Atl. 498 (1936).

61 United States v. Hill, 1 Brock. 156 (1809), and cases cited in A.L.R., op. cit. supra note 60, at 1360. It has even been held that when a statute vesting a court with criminal jurisdiction is repealed, the court loses all authority to convene a grand jury. State v. Doherty, 60 Me. 504 (1872).
lations, 62 extortion, 63 kidnapping, 64 and possession of stolen goods, 65 but no matters of state law. 66 The state grand jury could investigate violations of any of the state's criminal statutes, including bribery of public officials. 67

Some states have special statutes authorizing grand juries to investigate the official acts and conduct of public officers. 68 Absent such a statute, some courts have held that grand juries have no power to launch a broad investigation of the executive branch of the government, based on "vague and indefinite charges," which would in the judgment of the executive officers hinder the proper administration of the government. 69 These courts also indicate that the grand jury may not undertake a blanket inquiry for the purpose of criticizing a particular officer or department. 70 A grand jury investigation based on "at least one or more cognate offenses," indicating a system of crime among executive officials which seriously injures the public welfare would, however, be permissible. 71 These limitations on the power of grand juries to investigate the executive may not exist in other jurisdictions. 72

The terms of juries are set by statute and are generally concurrent with the term of the court. 73 Some statutes exist for holding over juries, 74 and it has been

63 62 Stat. 793 (1948), 18 U.S.C.A. § 1951 (1951) (Anti-Racketeering Statute), making it a crime to obstruct, delay, or affect interstate commerce by robbery or extortion, or to attempt or conspire to do so, or to commit or threaten to do physical violence to person or property in furtherance of acts which would violate the section. 62 Stat. 741 (1948), 18 U.S.C.A. §§ 875, 876 (1950), make it a crime to use the mails for such threats.
69 As with a legislative committee, there is a presumption that the subject matter being examined by a grand jury is proper. People v. Sheridan, 349 Ill. 202, 208, 181 N.E. 617, 620 (1932); Re Black, 47 F. 2d 542, 544 (C.A. 2d, 1931) (the "clearest proof" of illegality of the investigation must be made). Cf. Re National Window Glass Workers, 287 Fed. 219 (N.D. Ohio, 1922).
70 In re Investigation Dauphin County Grand Jury, 332 Pa. 289, 299, 2 A. 2d 783, 788 (1938).
71 Ibid.
73 This was the case at common law. People v. Brautigan, 310 Ill. 472, 478, 142 N.E. 208, 210 (1923). The New York statute which formerly declared that a grand jury was discharged with the final adjournment of the court, was amended in 1950 so that the jury will be con-
suggested that laws for the extension of the jury's life be enacted in all the states, thus enabling investigations to be carried to their conclusions. Unless authorized by statute, the jury has no money at all with which to hire the services of special detectives or accountants, it being presumed that these functions can be performed by members of the state's attorney's staff. Nor are the individual grand jurors permitted personally to finance crime investigations.

It is generally agreed that a grand jury does not have to have a particular case before it in order to act. It has also been said that a grand jury may consider matters coming from any of three general sources: the court, the district attorney, or the jurors themselves. In most states, individual citizens are not permitted to bring complaints directly to the grand jury, unless they have first complained to the state's attorney and a committing magistrate, and these officials have not acted. In practice, the juries are very dependent upon the prosecuting attorney's office for information. Where the particular attorney's office is involved in the corruption, there is danger that the jury will not hear all available testimony. The right of juries to dispense with the services of a particular prosecutor apparently turns on the statute of each state, but with the jury considered merely recessed until the day before the court's next term. N.Y. Code Crim. Proc. (McKinney, Supp., 1952) § 251.

77 Burns International Detective Agency v. Doyle, 46 Nev. 91, 208 Pac. 427 (1922); Burns International Detective Agency v. Holt, 138 Minn. 165, 169, 164 N.W. 590, 595 (1917).
79 Field, C. J., in Re Charge to Grand Jury, 2 Sawy. 667 (1872).
80 Ibid., at 673, 675, citing a federal statute which prohibits persons from attempting to influence a jury through unrequested communication—now 62 Stat. 769, 770 (1948), 18 U.S.C.A. §§ 1503–4 (1950); United States v. Kilpatrick, 16 Fed. 765, 777 (N.D. N.C., 1883); People v. Parker, 374 Ill. 524, 30 N.E. 2d 11 (1940), cert. denied, 313 U.S. 560 (1910), noted in 8 Univ. Chi. L. Rev. 561 (1941) (letter written to grand jurors without first going to state's attorney or magistrate constitutes contempt).
81 Brack v. Wells, 184 Md. 86, 40 A. 2d 319 (1944). Cf. King v. Second Nat. Bank and Trust Co., 234 Ala. 106, 173 So. 498 (1937); Hott v. Yarborough, 112 Tex. 179, 245 S.W. 676 (1922) (interpreting statute which required grand jury to inquire into all indictable offenses of which they are informed by the State's Attorney "or any other credible person").
82 See Ploscowe and Spero, The Prosecuting Attorney's Office and the Control of Organized Crime, in ABA, op. cit. supra note 25, at 217. For a layman's recognition of this dependence, see Rawson, A Layman Looks at the Grand Jury, 4 Western Reserve L. Rev. 19, 30 (1952).
83 The jury may be empowered to call more witnesses than actually named on an indictment. N.Y. Crim. Code (1945) § 609; Cal. Penal Code (Deering, 1941) § 1326; United States v. Terry, 39 Fed. 353, 362 (N.D. Cal., 1889); Carroll v. United States, 16 F. 2d 951, 953 (C.A. 2d, 1927).
84 Compare Matter of District Attorney Relating to Grand Jury, 14 N.Y. Crim. 431, 432 (1900) ("The grand jury may require the district attorney to examine witnesses") with People...
out funds to hire investigators, such a power might be of no practical use.

The grand jury’s power to investigate has been said to be “original and complete,” and not dependent upon the approval of the judge. The court cannot limit the scope of the investigation of the grand jury. However, the judge has a number of methods by which he can exercise an indirect control over the grand jury’s investigation. He can give instructions to the jury, which in the ordinary case will probably be observed; he can refuse to authorize expenses or process; and he can discharge the jury at any time and for any reason.

The grand jury traditionally operates through the procedure of closed hearings and penalties are prescribed in most states for disclosure of any of the proceedings. The grand jury, whether or not it is technically a judicial body, has the close assistance of the court on matters of issuing and enforcing subpoenas. A statute may provide specifically for the issuance of subpoenas by the clerk of the court at the instance of the grand jury. In the absence of such a statute, the subpoena may be issued in the name of the court by the clerk, even though the grand jury has not requested the subpoena to issue. Refusal to comply with the subpoena makes the witness answerable to the court for contempt.

The witness retains his privilege against self-incrimination under the federal or state constitution, subject to statutes which grant immunity from prosecu-

v. District Court, 75 Colo. 412, 413, 225 Pac. 829 (1924) (“[It shall be the duty of the district attorney to advise any grand jury convened within his district, and examine witnesses which may be subpoenaed before such grand jury”). Perhaps a more effective solution is a statute which empowers the governor of a state to replace a prosecuting attorney, e.g., N.Y. Exec. Law (McKinney, 1951) § 63(2) and N.Y. Const. Art. 9 § 5. For a vivid example of an indirect use of this power, see the account of the “run-away grand jury” in Hughes, Attorney For the People 59 (1940). A Model Department of Justice Act, advocated by the American Bar Association and the Council of State Governments, op. cit. supra note 45, at 79, would allow the grand jury or governor to request the attorney general to supersede a prosecuting attorney, or would allow him to be removed by a petition approved by the court.


United States v. Thompson, 251 U.S. 407, 413 (1920).


The exact status of the grand jury is the subject of much comment. See Coblentz v. State, 164 Md. 558, 566, 166 Atl. 45, 49 (1933) (not a judicial body); Greenberg v. Superior Court, 19 Cal. 2d 319, 323, 121 P. 2d 713, 716 (1942) (it is a judicial tribunal); Cobbledick v. United States, 309 U.S. 323, 327 (1940) (the proceeding is a judicial inquiry).


E.g., O’Hair v. People, 32 Ill. App. 277, 280 (1889); Ferriman v. People, 128 Ill. App. 230, 236 (1906).

See State v. Kemp, 126 Conn. 60, 72, 9 A. 2d 63, 69 (1939).
or the power of the court to allow a prosecutor to promise immunity.  

Most state perjury statutes are applicable to grand jury proceedings.  

Some states have replaced the traditional grand jury system with a so-called "one-man grand jury," by empowering judges to carry on their own investigation where there is probable cause to suspect that a crime has been committed and that some one may be able to give material evidence regarding it. Such an investigation may be carried on with or without the assistance of the state's attorney. The proceedings are secret, but the witness has the same privileges as before a grand jury. The consideration of cases is at the discretion of the judge and if he is unwilling to have certain officials prosecuted he might either ignore the case or find "no bill."

**Federal Executive**

Indirect investigations into municipal corruption may be carried on by several federal executive departments. The Bureau of Internal Revenue, through its enforcement of personal income taxes and wagering taxes, has authority to examine the records of individuals whom the collectors have probable cause to believe are not complying with the statutes. Compliance with the wagering tax provisions entails both the payment of an excise tax on wagers and an occupational tax for the taking of wagers. The payment of the occupational tax

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95 Ex parte Barnes, 73 Tex. Crim. 583, 166 S.W. 728 (1914). Ill. Rev. Stat. (1951) c. 38, § 82 permits a court to grant immunity in investigations of bribery or offers of bribery before a grand jury. A Model State Witness Immunity Act, sponsored by the American Bar Association and the Council of State Governments, would permit the prosecuting attorney, with the permission of the Attorney General, to request the court to grant immunity to any witness in criminal proceedings before a court or grand jury—such immunity to be effective only after hearing an order by the court compelling testimony. Council of State Governments, op. cit. supra note 45, at 90. A similar bill sponsored by the Chicago Crime Commission and recently passed by the Illinois Legislature applies only to material witnesses and would be specifically inapplicable if the disclosure involved would make the witness liable to prosecution under the laws of another state or of the United States. Ill. S.B. 97, 68th Gen. Assembly (1953).

96 E.g., Ill. Rev. Stat. (1951) c. 38, § 473 applies to "any judicial proceeding" and has been interpreted to mean any proceeding which takes place in or under the authority of a court of justice or which relates in any way to the administration of justice. Hereford v. People, 197 Ill. 222, 64 N.E. 310 (1902). N.Y. Penal Law (McKinney, 1944) § 1620 is effective "in, or in connection with, any action or special proceeding, hearing, or inquiry. . . ."


must be accompanied by the detailed, public disclosure of the taxpayer’s place of business and business associates, and the displaying of a tax stamp at that place of business.\textsuperscript{100}

The collectors are empowered to summon suspected parties and to subpoena their records,\textsuperscript{101} and these summonses will be enforced by the federal courts.\textsuperscript{102} The Bureau maintains a Special Fraud Squad to examine in detail tax returns of notorious persons and businesses.\textsuperscript{103} Although the privilege against self-incrimination is available to the taxpayer as regards testimony which he may be called upon to give,\textsuperscript{104} it is not decided whether the privilege is available to protect the records required by law to be kept for the purpose of computing taxes.\textsuperscript{105} Failure to keep such records is a misdemeanor and it has been recommended that it be made a felony.\textsuperscript{106} The Kefauver Committee also recommended\textsuperscript{107} that special record requirements be passed which would apply to gambling houses, and that special net worth statements be required of acknowledged professional criminals.

The Justice Department, through the FBI, is commissioned to investigate any suspected violations of those Federal laws not specifically enforceable by any other department.\textsuperscript{108} This means that matters of extortion, kidnapping and possession of stolen goods can be investigated as can any occurrence which seems linked with use of interstate transport or communication.\textsuperscript{109} These investigators have no power of subpoena\textsuperscript{110} independent of the court, but their superior detective ability, coupled with the prestige of their position, aids them in getting the facts.

The Kefauver Committee suggested the establishment of a new executive department to act as a federal crime commission.\textsuperscript{111} Its primary job would be

\begin{itemize}
  \item \textsuperscript{100} 65 Stat. 529 (1951), 26 U.S.C.A. § 3291 (Supp., 1952), and 53 Stat. 395 (1939), 26 U.S.C.A. § 3275 (1940) (requiring public disclosure); 65 Stat. 529 (1951), 26 U.S.C.A. § 3293 (Supp., 1952) (requiring tax stamps). These sections have recently been held to involve neither an infringement by Congress upon the police power of the states, nor a violation of the privilege against self-incrimination. United States v. Kabriger, 345 U.S. 22 (1953).
  \item \textsuperscript{101} 53 Stat. 439 (1939), 26 U.S.C.A. § 3615 (1940).
  \item \textsuperscript{103} See Kefauver Report, p. 9.
  \item \textsuperscript{104} In re Friedman, 104 F. Supp. 419 (S.D. N.Y., 1952).
  \item \textsuperscript{105} It has been argued that these records may come under the “required records” exception to the privilege against self-incrimination. Meltzer, op. cit. supra note 19, at 715 et seq.
  \item \textsuperscript{107} Kefauver Report, pp. 11, 13.
  \item \textsuperscript{108} Graske, Federal Reference Manual 98 (1939). Laws not enforceable through the FBI include the Narcotics Act (Treasury Dep’t), customs and smuggling laws (Treasury Dep’t), and mail frauds (Post Office Dep’t).
  \item \textsuperscript{110} 62 Stat. 817 (1948), as amended, 18 U.S.C.A. § 3052 (Supp., 1952), empowers the investigators only to serve warrants and subpoenas.
  \item \textsuperscript{111} Kefauver Report, p. 8.
\end{itemize}
to continue investigation of the matters which the committee considered, but it would have no powers of subpoena and would have to rely upon appropriate Senate committees to issue subpoenas for it.\textsuperscript{112}

\textit{State Executive}

To further the exercise of his constitutional and statutory duties,\textsuperscript{113} the governor of a state may be given powers by the state legislature to investigate various matters of state and municipal corruption. New York has two such statutes. The first empowers the Governor to direct the Attorney General of the state to conduct an inquiry into "matters concerning the public safety, public peace and public justice."\textsuperscript{114} Although originally intended as a World War I antisubversive measure,\textsuperscript{115} this grant would appear to include a wide variety of subjects for inquiry. The only limitation which has so far been imposed is that the statute cannot be interpreted to authorize the investigation of a particular crime, since this is the function of a grand jury.\textsuperscript{116}

The whole of the investigation is under the control solely of the Governor and the Attorney General. Money appropriated by the state legislature into a general fund is disbursed freely by the Attorney General with only the approval of the Governor. The Attorney General is free to hire his own assistants without civil service examinations. The assistants must make weekly reports to both the Governor and the Attorney General and they are forbidden to disclose to any one else the names of witnesses examined or information obtained.

The statute gives the Attorney General and his assistants the power to subpoena and examine witnesses under oath and to require the production of books and records "which he deems relevant or material to the inquiry." Refusal to comply is made a misdemeanor without any explicit exception for a claim of privilege against self-incrimination. Although attorneys general have twice attacked the statute's broad grant of powers,\textsuperscript{117} the New York Court of Appeals

\textsuperscript{112} One member of the Committee, Senator Wiley, objected to this proposal on the grounds that it might result in the basis for a national police force and that it might unnecessarily interfere with and duplicate the work of existing agencies. Ibid. The Commission on Organized Crime of the American Bar Association disapproved of S.J. Res. 65, 82d Cong. 1st Sess. (1951), which arose from the Kefauver recommendation, on the ground that without the subpoena power, such a commission would not be as effective as a congressional committee. ABA, op. cit. supra note 25, at 64.

\textsuperscript{113} E.g., the responsibility of the Governor of New York to "take care that the laws are faithfully executed," N.Y. Const. Art. 4, § 3; his power to supersede and remove district attorneys, N.Y. Exec. Law (McKinney, 1951) § 63(2); N.Y. Const. Art. 9, §§ 5, 6; and his power to remove certain public officials. Ibid., at Art. 9, § 9; N.Y. Public Officers Law (McKinney, 1952) §§ 32–34.

\textsuperscript{114} N.Y. Exec. Law (McKinney, 1951) § 63(8).

\textsuperscript{115} See In re Di Brizzi, 303 N.Y. 206, 101 N.E. 2d 464 (1951).


\textsuperscript{117} [1918] Ops. N.Y. Att'y Gen. 16; [1940] Ibid., at 25–26. One of the suggestions of the Attorney General in 1940 was that an immunity clause be added to the statute to justify the categorical statement of the enforcement clause [1940] Ibid., at 25. This was said to be unnecessary. See In re Di Brizzi, 303 N.Y. 206, 101 N.E. 2d 464 (1951).
recently declared the act constitutional, pointing out among other things that witnesses would retain their privilege against self-incrimination in proceedings before the commission.

The second New York statute is the Moreland Act, which authorizes the Governor or his appointee to “examine and investigate the management and affairs of any department, board, bureau or commission of the State.” This would apparently include an examination of whatever role the district attorney’s office might play in the scheme of organized crime in the cities.

The pay of appointees depends upon specific legislative appropriation and so is subject to some political pressure. The statute grants the power to subpoena and examine persons under oath and to require the production of any books or papers deemed relevant, and subpoenas will be enforced by the courts. It may be presumed that the privilege against self-incrimination is available to witnesses, and that the New York perjury laws would be applicable to these proceedings.

In each state there are a number of state’s attorneys or district attorneys who are responsible for the enforcement of all the laws of the state, including laws pertaining to bribery, gambling and other matters common to municipal corruption. There is, however, a good deal of confusion as to just what role should be played by these officials in the investigative process. Unless there is a statute requiring the prosecuting attorney to make investigations as well as prosecute violations of particular laws, the holding of investigations is at the prosecuting attorney’s discretion. The investigatory staffs of state prosecutors may be composed entirely of police officers “on loan” from municipal forces and subject to the control of the very people to be investigated. The investigators are

A dissent questioned the manner in which the Governor had virtually by-passed the Attorney General in setting up the New York State Crime Commission.


119 Once the money is appropriated, however, expenditures are at the discretion of the governor, subject to the audit of the comptroller. Employees are considered to be in unclassified civil service and, hence, there are no salary limitations. [1927] Ops. N.Y. Att’y Gen. 322.


121 Ibid., at 355.

122 N.Y. Penal Law (McKinney, 1944) § 1620 is applicable to “any action or special proceeding, hearing, or inquiry, or on any occasion in which an oath . . . may lawfully be administered. . . .”

123 This may include, for example, gambling laws. See Baker and De Long, The Prosecuting Attorney—Powers and Duties in Criminal Prosecution, 24 J. Crim. L. 1025, 1035 et seq. (1934).


125 Ibid., at viii; Ploscowe and Spiro, op. cit. supra note 82, at 252. One example of control is the case of Mayor Thompson of Chicago, who quarreled with the Cook County State’s Attorney and subsequently removed all of the officers assigned to that office. Moley, Politics and Criminal Prosecution 72 (1929).
generally given no special powers of subpoena, but must rely upon detective ability and the assistance of courts for search warrants and other process.

Two major difficulties involved in the investigation of municipal corruption by state’s attorneys are: (1) the prosecutor is generally an elected official, often closely involved with the municipal political structure, and his staff is generally composed of political appointees; and (2) other state, county, or local police agencies may be required by statute to investigate the same matters and, hence, “buck-passing” by a lazy or corrupt prosecutor may be facilitated.

Several groups have recommended the establishment in each state of a permanent state crime investigating commission, the function of which would be to investigate organized crime and its relationship to government and to keep public officials and agencies and the public generally advised of its findings. It would have full power of subpoena enforceable through the courts.

**Municipal Executive**

A city charter may provide for a special executive department to examine and report on the operation of other governmental agencies. The New York City Department of Investigation is empowered to make investigations into any of the “affairs, functions, accounts, methods, personnel or efficiency of any agency” when so directed by the mayor, the city council or the commissioner of the department (appointed by the mayor). The term “agency” is defined in the charter as including any “city, county, borough...other office, position...or a corporate institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.” Court decisions have determined, however, that although the department may examine the affairs of people who do business with the city, it cannot investigate state officials.

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127 Ploscowe and Spiero, op. cit. note 82, at 225.
128 Ibid., at 229, 232 et seq.
129 E.g., Ill. Rev. Stat. (1951) c. 125, § 17, making each sheriff the “conservator of the peace in his county” with instructions to “prevent crime.”
130 This possibility may be reduced somewhat by the enactment of statutes similar to a proposed Department of Justice Act, which would establish a special department under the state attorney general to which all state enforcement agencies would be responsible and which would grant special powers to the governor and attorney general to remove or supersede a prosecuting attorney. Council of State Governments, op. cit. supra note 45, at 79.
131 Ibid., at 93. Terms of the commissioners are set at five years, with an alternative provision which would limit the terms of service to the term of office of the governor who appoints the commissioners. The alternative would permit a corrupt governor to bring his own commissioners into office with him. See also the recommendations of the New York State Crime Commission, as reported in the N.Y. Times, p. 10, col. 3 (Jan. 26, 1955).
132 N.Y. City Charter (1942) §§ 801-3.
133 Ibid., at § 981.
135 In re Herlands (Sutherland), 170 Misc. 131, 9 N.Y.S. 2d 956 (S. Ct. 1939), aff’d without opinion, 257 App. Div. 935, 13 N.Y.S. 2d 279 (1939), aff’d without opinion, 288 N.Y. 708, 43 N.E. 2d 91 (1942) (justices of the Supreme Court are state officials and not subject to investigation).
or even nonexecutive municipal matters. The commissioner has the power to compel the attendance of witnesses and to administer oaths, and he may delegate this power. The New York perjury law has been held to apply to these proceedings. The department also maintains a complaint bureau.

It has been suggested that the Mayor of Chicago should have a special unit which would both receive and check complaints about administrative procedures and personnel, and would make preliminary investigations of alleged malfeasance, presenting its findings to both the Mayor and the State's Attorney. The legal basis for such a unit, if it were created by the Mayor alone, would be questionable, since the decision would have to be made as to whether its establishment and maintenance constitute a power delegated to the city by statute. The effectiveness of a fact-finding unit responsible solely to the Mayor will depend in large part, of course, on the Mayor's honesty, efficiency and energy.

Local police forces, in enforcing the ordinances of a municipality and the laws of the state, may discover illegal connections between criminals and public officials on all levels. Besides any personal involvement in corruption, pressures toward nondisclosure of knowledge by policemen may take the form of social ostracism by fellow policemen, and assignment to undesirable duty. Furthermore, even if the policeman attempts to disclose his knowledge, he may be prevented by a corrupt court from testifying. Disclosure might be facilitated by institution of state assistance and control over local police groups.

**Private Organizations**

The form of private groups investigating and acting regarding crime and politics is quite varied. One form is the city-wide Crime Commission such as has existed in Chicago since 1919 as an independent, incorporated body for the purpose of studying crime conditions in the city and helping to make enforcement more effective. Crime commissions are financed through voluntary contributions, and the larger commissions may employ a staff of investigators and court observers. These groups have no special subpoena powers, but rely upon the

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136 In re Ellis, 176 Misc. 887, 28 N.Y.S. 2d 988 (S. Ct., 1941) (counsel employed by City Council not subject to investigation).

137 N.Y. City Charter (1942) § 805. This includes the power to subpoena persons who are not employees of the city. Karelsen v. Yavner, 59 N.Y.S. 2d 683, 688 (S. Ct., 1945).


139 N.Y. City Charter (1942) § 804.

140 6 Report of the Chief Investigator of the Chicago City Council Emergency Committee on Crime, as reported in the Chicago Sun-Times, p. 21, col. 3 (Jan. 16, 1953).

141 Ibid., at p. 18, col. 1.

142 A Model Police Council Act is being urged to create a special executive department of the state (1) to inspect, report on, and set standards for local police groups and training schools; (2) to make recommendations concerning the expansion and consolidation of police services; (3) to encourage research by public and private groups on the subject of police administration. Council of State Governments, op. cit. supra note 45, at 85. See also Garrett, The Police and Organized Crime, in ABA, op. cit. supra note 25, at 177, 206.
ability of their investigators to "ferret out" information. They have, as a rule, a great deal of independence and prestige.\footnote{142}

Another form of private group is the professional association, exemplified by the national and local bar associations. These groups maintain committees which study criminal law and enforcement and which may uncover indications of corruption.

Still another form of private group is the neighborhood committee, an example of which is the South East Chicago Commission. Inspired by community indignation over the increasing crime rate and decreasing property values in the area, the University of Chicago called a public meeting at which it presented a proposal for a community organization. A committee of five prominent local citizens laid the groundwork and a commission was set up to examine and act upon the entire social problem of the area, including violations of criminal laws and building regulations. Emphasis is placed on checking the work done by the local police authorities. Money is provided by individuals and institutions in the community, including the University. The staff includes two full time directors (an attorney and a sociologist), and a building inspector. Investigations are carried out through information volunteered by citizens of the community and through the assistance of investigators of the Chicago Crime Commission. Policy is determined by a ninety-man board of directors, made up of prominent citizens.\footnote{144}

Newspapers have often indulged in investigations and "crusades" regarding various aspects of municipal corruption. The actual investigatory work may be done by reporters whose contacts may enable them to learn more than many professional detectives or formal boards of inquiry.\footnote{145}

II

Once the facts about municipal corruption are uncovered, a number of actions to help "clean up" the situation may be undertaken: a wholesale replacement of corrupt officials by election of a reform ticket, criminal prosecution of the guilty parties, removal from office by executive order, and prevention of recurrence of

\footnote{142}{For more detailed description, see Peterson, Crime Commissions in the United States (1945). Formation of groups of this type is recommended by the Kefauver Committee. Kefauver Report, p. 30.}

\footnote{144}{The multiplicity of private organizations studying corruption in a given municipal area creates much waste and duplicated effort. As an attempt to coordinate these groups, some larger organization may be formed, such as the Citizens of Greater Chicago (CGC). This incorporated group includes representatives of approximately one hundred neighborhoods and special interest organizations. Funds come from city-wide voluntary donations. The objectives of the CGC include not only the strengthening of law enforcement in the city, but also education and pressure toward getting a new city charter, reapportionment of state senatorial districts, a new judicial article for the state constitution, and a new criminal code. CGC Fact Book 3 (1953).}

\footnote{145}{E.g., an alleged "pay-off book" belonging to a police official was discovered by a Chicago newspaper at a time when the same official had legally obstructed the operation of the City Council's Emergency Committee on Crime. Chicago Sun-Times, p. 1 (March 23, 1953).}
the offenses through legislative or other means. Action on any of these levels may be possible, no matter what agency is used to get the necessary information, but some of the agencies already outlined have advantages and limitations which generally make one type of action more appropriate than another.

**Election of a Reform Ticket**

Although it requires waiting until future elections, popular demand for a new, clean government has occasionally been shown to be effective. In New York, for instance, the disclosures of the Seabury investigation in the '30s (an investigation by a committee of the state legislature) were followed by the election of a fusion ticket to replace the Tammany machine. In 1952, following the disclosures of the Kefauver Committee, Rudolph Halley, the Committee's Chief Counsel, was elected president of the City Council of New York City.

If there is extensive corruption in a municipality, it is probable that a major elective change is the only means of bettering the situation. Once such a change is made, corruption in particular offices may be effectively handled by specific agencies. Absent such change, however, there is a danger that the agency nominally responsible for dealing with the corruption problem may itself have been corrupted and thus not only may fail to act, but may act in such a way as to conceal the crime-politics link by a "whitewash" investigation.

**Criminal Prosecution**

The agency which can use its information most directly to prosecute guilty officials is the grand jury. The effectiveness of a federal grand jury is, however, limited by the fact that it can neither indict an official for violation of a state law nor, usually, inform state prosecutors about its findings.

Another possible action is the impeachment of the corrupt official, but this is usually so cumbersome a device as to be impracticable.

Conversely, if the various enforcement agencies are organized in a structure conducive to "buck-passing," a given piece of information may never be acted upon. For example, on resigning from his position, the Chief Investigator of the Chicago City Council's Emergency Committee on Crime prepared a six-volume, 835-page report of his activities and findings. This report was at first kept under lock and key, unread, by the Committee's Chief Counsel. When it was finally turned over to the Committee, the Committee members voted first to give it to the State's Attorney, still unread. When he refused it, the Committee voted to give it to the Chief Justice of the Criminal Court, who also refused it. Only after these attempts did the Committee members even begin to read the report.

Apart from criminal prosecution, the sanction of disbarment may be employed against attorneys involved in corruption. See ABA, op. cit. supra note 25, at 3.

As with state grand juries (see note 89 supra), the proceedings of a federal grand jury are secret. Fed. Rules Crim. Proc. 6(e). Disclosure is, however, possible after indictment has been found, where justice so requires, at the discretion of the court. Metzler v. United States, 64 F. 2d 203 (C.A. 9th, 1933); United States v. Alper, 156 F. 2d 222 (C.A. 2d, 1946). There is apparently no power in the jury to submit a report where it has found evidence, but not of a quantity or type to justify an indictment. Rector v. Smith, 11 Iowa 302 (1860); Coons v.
The operations of the Bureau of Internal Revenue have a two-fold effect on prosecutions. Enforcement of the gambling tax regulations discloses to state authorities the identity, location, and associations of some gamblers, and investigations of returns may serve to uncover grounds for federal tax evasion prosecution by the Bureau.

Two major problems in state prosecution are the effect of immunity statutes and the position of the state prosecuting attorney. If, at some time during the fact-finding process the witness has been granted by statute or agreement immunity from future prosecution, the possibility of later punishment in this form is removed. Public officials may be forced to waive any immunity, but in other cases it is important for the investigator carefully to consider whether the information to be gained is worth any grant of clemency.

In the matter of prosecution, the action of the prosecuting attorney is all-important. It is he who brings charges before the grand jury and who is responsible for the prosecution of indicted parties. Any susceptibility on the prosecutor's part to political pressure is likely to be manifested in his treatment of cases and willingness to act regarding matters of corruption. Proposed statutes may limit his power to "throw away" a case, and reticence upon his part to prosecute may be somewhat counteracted by the activities of private groups. Public disclosures of acts of corruption which the prosecuting attorney has failed to investigate or present to a grand jury may arouse sufficient public indignation to force the prosecutor to act in order to avoid losing his position.


12 E.g., N.Y. Const. Art. 1, § 6, states that a public officer testifying before a grand jury must waive all immunity from future prosecution under penalty of being removed from office. A similar act is being advocated by the Council of State Governments for adoption in the states, but this act explicitly does not apply to elective positions for which the exclusive means of removal are delimited by the constitution. Council of State Governments, op. cit. supra note 45, at 117.

Even without statutes of this sort, a grand jury may coerce policemen into waiving immunity by maintaining that a refusal to waive immunity is tantamount to a claiming of the privilege against self incrimination and grounds for dismissal. Drury v. Hurley, 339 Ill. App. 33, 88 N.E. 2d 728 (1949), and authorities cited note 58 supra. Although statutes and rulings of this sort may be effective in the process of finding and prosecuting municipal corruption, it raises questions as to just how many constitutional rights a person effectively gives up on taking public office and the deterrent effect upon potential public leaders.

12 E.g., a proposed amendment to state criminal codes would require a prosecuting attorney to make full disclosure as a matter of public record and get the consent of the court before he could "nolle pros" or dismiss a case, or before the court could accept the plea of guilty to a lesser offense. Council of State Governments, op. cit. supra note 45, at 115.
and jeopardizing his party's position in future elections. Many private groups maintain trained court observers who can report on mishandling of cases. In addition, newspapers can mobilize public opinion on these matters.

**Removal by Executive Order**

Questions of executive removal of corrupt officials are governed entirely by statute. The governor of a state may be given power to remove various state officials, including prosecutors.\(^{154}\) In New York, the Governor also has the power to remove the Mayor and Borough Presidents of New York City.\(^{155}\) If he receives information of corruption from his own investigating agencies or other source, he is in a position to act immediately—if he wants to. Similarly, the mayor of a large city will probably have power to replace his police commissioner or corporation counsel.\(^{156}\) Here again, public opinion and private pressure groups play their roles.

**Prevention of Recurrence of the Offenses**

There are two ways of preventing a recurrence of the pattern of corruption: by formal legislation and by private vigilance. Since the stated purpose of a legislative investigating committee is usually to gather information for the purpose of deciding what laws should or should not be passed,\(^{157}\) it might be expected that the legislative committee is best qualified to follow up effectively on in-

\(^{154}\) See note 84 supra.

\(^{155}\) N.Y. City Charter (1936) § 8 (Mayor), § 81b (Borough President), § 92 (Comptroller), § 431b (Police Commissioner). The completeness of this power is discussed in 66 U.S.L. Rev. 117 (1932).

\(^{156}\) E.g., N.Y. City Charter (1936) § 4 (mayor may remove any official whom he has power to appoint, provided removal procedure is not otherwise stipulated). See also ibid., at § 431b (applying specifically to the Police Commissioner). Ill. Rev. Stat. (1951) c. 24, § 9-21, empowers the mayor to remove his appointees.

\(^{157}\) If the resolution establishing the investigating committee expresses a legislative purpose, the power of the committee will not ordinarily be open to question. United States v. Kamp, 102 F. Supp. 757, 758 (D. D.C., 1952); Morford v. United States, 176 F. 2d 54, 58 (App. D.C., 1949); Eisler v. United States, 170 F. 2d 273, 279 (App. D.C., 1948). The burden of proof which must be assumed by a person attacking the validity of a legislative investigation is indicated in Tenney v. Brandhove, 341 U.S. 367, 378 (1951): "'To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive.' It is possible, though not probable, that a court may interpret the statement of legislative intention as merely a cloak. See dissenting opinion of Clark, J., in United States v. Josephson, 165 F. 2d 82, 93 (C.A. 2d, 1947), cert. denied, 333 U.S. 838 (1948). See also Greenfield v. Russel, 292 Ill. 392, 127 N.E. 102 (1920). Even if no legislative purpose were expressed, the courts might permit an investigation aimed at the criminal acts of a particular public official whose removal could be brought about by action of the legislature, e.g., McGrain v. Daugherty, 273 U.S. 135 (1927), which involved the investigation of past activities of the U.S. Attorney General.

There are two questions involved in the requirement that a legislative purpose be stated: (1) whether the committee must be committed to recommending the passing of specifically stated laws or types of laws, and (2) whether, in view of the non-lawmaking functions of the legislature, such as impeachment, even a general purpose to recommend legislation should be required. See Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev. 153, 211-21 (1926).
formation discovered. However, the limitation of subjects on which the body has power to legislate and the lack of willingness of the body to legislate may impair the effective use of such information. Congress can legislate on matters of interstate commerce and communication, but the legislation necessary to fight municipal corruption is apt to be on a more local level. State legislatures, which have the power to effect changes in city charters and criminal laws, are often closely tied up with big city politics and may be hesitant to pass this type of legislation. City councils, which often have power over police department structures, municipal court judges’ salaries, and the like, include as members many of the people who benefit directly from corruption.

In most states, the governor may, if he wishes, utilize facts found by any of the executive methods of inquiry to frame bills for presentation to the legislature.

Lack of action by the legislature or the governor may be counteracted by the action of private groups. Introduction of a bill can come through the organized pressure of citizens on legislators and the efforts of crime commissions and bar associations who draw up model bills. Testimony in favor of the bill and mobilization of public opinion for the bill might come from prestige groups and newspapers.

The nonlegislative form of prevention is that which comes from a program of vigilance by permanent committees of either an official or unofficial nature. A federal crime commission, as recommended in the Kefauver Report, state investigating commissions, private groups and newspapers, and in some states grand juries, through their independent investigations and exchange of information, could keep the public and appropriate governmental officers continually informed of the activities of public officials.

While there is undoubted value in disclosing and using information relating to municipal corruption, two countervailing factors should be considered. The first is the danger that, in attempting to find facts, one man or one group of men may be given too much legal power. As has been shown, a congressional committee, if it states as its purpose the gathering of facts for future federal legislation, may ask questions on many peripheral matters. Since it is not a judicial proceeding, its activities are not limited by the procedural safeguards which are required in the courts.

158 The Kefauver Committee Resolution was explicit in forbidding the Committee from making any changes in state gambling laws, interfering with a state’s right to handle gambling, or even recommending any changes in state gambling laws. Sen. Res. 202, 81st Cong. 2d Sess. (1950). The Kefauver Report was also quite explicit in pointing out that the burden of effective legislative change is on the states. Kefauver Report, p. 5.

159 E.g., see notes 25, 84, 95, 130, 142, 153 supra.

160 I.e., those which permit reports. See note 151 supra.

161 The extent of exchange of information which is possible can be seen by the numerous Acknowledgments of sources contributing to the Kefauver Committee Report, at p. 21 of the report.

162 See Galloway, Proposed Reforms of Congressional Investigations, 18 Univ. Chi. L. Rev. 478 (1951). One limitation recently imposed would protect the witness from television cameras,
Similarly, while an investigation authorized by a governor by virtue of a special statute should be free from obstruction by a corrupt legislature, it is quite possible that this independence could be used to harass any of the governor’s personal or political enemies under the guise of inspecting the operation of their offices or “the public safety.”

A one-man grand jury is in a similar position. The one-sided, secret operation of a grand jury has been defended on the grounds that a person, if indicted, will have an opportunity to vindicate himself on trial. However, the expense, trouble and social repercussions of a trial are great, and it might be questioned whether one man should be empowered to impose this burden upon private citizens or public officials.

The second problem is that connected with publicity. Through procedures of many of the fact-finding agencies—closed hearing of legislative groups, grand juries which are not allowed to issue reports, or executive commissions which report only to the governor or a similar official—information gathered can be suppressed from public knowledge. It would seem that the public has an interest in knowing what these agencies have found, but it must be remembered that a great deal of adverse public opinion can be formed around unsubstantiated accusations or the presentation of extraneous bits of evidence. In many instances, the accused has no opportunity to reply; in others, the reply is never publicized to an extent which would eradicate the harm done to the individual by the accusation. The problem remains as to where the balance should lie between informing the public and protecting the individual from unfair pressures.

flash bulbs, spectators and other elements which might “disturb and distract” a witness. United States v. Kleinman, 107 F. Supp. 407, 408 (D. D.C., 1952). The case is based on the somewhat naive notion that “the only reason for having a witness on the stand . . . is to get a thoughtful, calm, considered and . . . truthful disclosure of facts.” Ibid.

The absence of indictment is the primary argument used to prohibit grand juries from making reports. See dissenting opinion of Woodward, J., in In re Jones, 101 App. Div. 55, 57 et seq., 92 N.Y. Supp. 275, 277 et seq. (1905).

JUDICIAL REVIEW OF ILLINOIS CIVIL SERVICE COMMISSION FINDINGS

Harrison v. Civil Service Commission highlights the confusion that surrounds the present scope of court review of findings of Illinois civil service commissions, and raises the question of what course the courts will follow when grant-

1 347 Ill. App. 405 (1952), Robson, P. J., and Schwartz, J., specially concurring.

2 For a description of the civil service commissions and the procedures for discharge before these commissions, see Civil Service Discharge Procedure in Illinois: Asset or Liability to Good Government?, 47 Northwestern U.L. Rev. 660 (1953). The comment makes two recommendations: (1) the common-law exclusionary rules of evidence, originally designed to prevent dubious evidence from influencing poorly educated jurymen, should not be introduced into hearings held before competent civil service commissioners; (2) the civil service commissions should be given considerably more latitude in recommending appropriate disciplinary action.