

Besides indictments, grand juries may also issue reports that may indicate nonindictable misbehavior, mis- or malfeasance of public officers, or other objectionable conduct.<sup>14</sup> Despite the vast power of grand juries, there is little in the way of judicial or legislative response designed to impose some supervisory restrictions on them.<sup>15</sup>

Within the meaning of this article a crime is made “infamous” by the quality of the punishment that may be imposed.<sup>16</sup> “What punishments shall be considered as infamous may be affected by the changes of public opinion from one age to another.”<sup>17</sup> Imprisonment in a state prison or penitentiary, with or without hard labor,<sup>18</sup> or imprisonment at hard labor in the workhouse of the District of Columbia,<sup>19</sup> falls within this category. The pivotal question is whether the offense is one for which the court is authorized to award such punishment; the sentence actually imposed is immaterial. “When the accused is in danger of being subjected to an infamous punishment if convicted, he has the right to insist that he shall not be put upon his trial, except on the accusation of a grand jury.”<sup>20</sup> Thus, an act that authorized imprisonment at hard labor for one year, as well as deportation, of Chinese aliens found to be unlawfully within the United States, created an offense that could be tried only upon indictment.<sup>21</sup> Counterfeiting,<sup>22</sup> fraudulent alteration of poll books,<sup>23</sup> fraudulent voting,<sup>24</sup> and embezzlement,<sup>25</sup> have been declared to be infamous crimes. It is immaterial how Con-

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<sup>14</sup> The grand jury “is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of whether any particular individual will be found properly subject to an accusation of crime.” *Blair v. United States*, 250 U.S. 273, 281 (1919). On the reports function of the grand jury, see *In re Grand Jury* January, 1969, 315 F. Supp. 662 (D. Md. 1970), and Report of the January 1970 Grand Jury (Black Panther Shooting) (N.D. Ill., released May 15, 1970). Congress has now specifically authorized issuance of reports in cases concerning public officers and organized crime. 18 U.S.C. § 333.

<sup>15</sup> Congress has required that in the selection of federal grand juries, as well as petit juries, random selection of a fair cross section of the community is to take place, and has provided a procedure for challenging discriminatory selection by moving to dismiss the indictment. 28 U.S.C. §§ 1861–68. Racial discrimination in selection of juries is constitutionally proscribed in both state and federal courts. See discussion under “Juries,” *infra*.

<sup>16</sup> *Ex parte Wilson*, 114 U.S. 417 (1885).

<sup>17</sup> 114 U.S. at 427.

<sup>18</sup> *Mackin v. United States*, 117 U.S. 348, 352 (1886).

<sup>19</sup> *United States v. Moreland*, 258 U.S. 433 (1922).

<sup>20</sup> *Ex parte Wilson*, 114 U.S. 417, 426 (1885).

<sup>21</sup> *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

<sup>22</sup> *Ex parte Wilson*, 114 U.S. 417 (1885).

<sup>23</sup> *Mackin v. United States*, 117 U.S. 348 (1886).

<sup>24</sup> *Parkinson v. United States*, 121 U.S. 281 (1887).

<sup>25</sup> *United States v. DeWalt*, 128 U.S. 393 (1888).