

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA IN AND FOR THE COUNTY OF DADE

SPRING TERM A. D. 1960

FINAL REPORT OF THE GRAND JURY

Filed

November 8, 1960

Circuit Judge Presiding

J. FRITZ GORDON

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TO THE HONORABLE J. FRITZ GORDON, JUDGE OF THE ELEVENTH
JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

The Spring Term 1960 Dade County Grand Jury was impaneled on May 10,
1960, and the following oath was administered by the Court:

"You, as grand jurors for the body of this County of Dade,
do solemnly swear that you will diligently inquire, and true
presentment make, of all such matters and things as shall
be given you in charge; the counsel of the State of Florida,
your fellows and your own, you shall keep secret, unless
required to disclose the same by some competent court;
you shall present no man for envy, hatred, or malice,
neither shall you leave any man unrepresented for love, fear,
favor, affection, reward, or hope thereof, but you shall
present things truly as they come to your knowledge,
according to the best of your understanding. So help you God."

Judge J. Fritz Gordon delivered his charge to the Grand Jury, instructing
us as to our duties and we have faithfully endeavored to abide by the oath
administered, and follow the instructions given to us by the Court.

We have carefully considered all criminal cases and other matters which
were presented to us or came to our attention, and having concluded our work,
we now make this our Final Report to the Court.

CAPITAL AND OTHER CRIMINAL CASES PRESENTED TO THE GRAND JURY

<u>Defendant</u>	<u>Charge</u>	<u>Disposition</u>
DENNIS MANAFORD WHITNEY, also known as DENNIS WHITNEY	First Degree Murder	True Bill
GARY LEE PHILLIPS	Rape	True Bill
FRED C. BURSE and HENRY T. TOLLIVER	Second Degree Murder	True Bill
JOHNNIE GRANT	Manslaughter	True Bill
GEORGE WILLIAMS	Rape	True Bill
BILLY RAY COOPER	Rape	No True Bill
AMADO VASQUEZ	Second Degree Murder	True Bill
LARRY WAYNE HARMON	First Degree Murder	True Bill
GEORGE PAUL GANS	First Degree Murder	True Bill
CLEO ORANGE, HERMAN WILLIAMS and FREDDIE BERNARD LAWRENCE, JR., also known as FREDDIE LAWRENCE, JR.	First Degree Murder	True Bill
JAMES JOSEPH MARTIN and PAUL JOSEPH O'GRADY	Attempt to Commit Grand Larceny	True Bill
JAMES MARK BRADY	Rape	True Bill
JEANETTE WILLIAMS	First Degree Murder	True Bill
ARTHUR STEPHEN DALEY, also known as EDDIE COLEMAN	Rape	No True Bill
JAMES C. ANTONIO	Manslaughter	True Bill
ARTHUR CLARK, JR., also known as ARTHUR CLARK	First Degree Murder	True Bill
ROMISE WALKER, also known as ROMISE GRAVES	First Degree Murder	True Bill
SHERMAN NORWOOD	Second Degree Murder	True Bill
DAVID E. ROBERTS	Manslaughter	No True Bill
ISTVAN J. ERSEK, also known as STEVE ERSEK	First Degree Murder	True Bill

THE HIGH COST OF AUTOMOBILE AND OTHER LIABILITY INSURANCE
AND THE RELATIONSHIP OF UNETHICAL ACTIVITY THERETO

This Grand Jury returned an indictment against James Joseph Martin and Paul Joseph O'Grady, charging them with attempted grand larceny in connection with the filing of a fraudulent claim against an insurance company seeking damages for injuries alleged to have been sustained from falling in a Miami five and ten cent store. This indictment climaxed months of intensive investigation by the office of the State Attorney. The investigation revealed that the two defendants placed candy bars on the staircase leading from a restaurant on the mezzanine floor to the ground floor, then walked down the staircase, stepped on the candy bars and simulated an accidental fall. They both feigned personal injuries and filed claims against the store which were turned over to the insurance carrier.

It was also disclosed by the investigation that one of the claimants had collected on several similar claims in other parts of the country and that the alleged fall was a deliberate act on the part of the two claimants to defraud the insurance company. Both defendants pleaded guilty to these charges, the ring leader was sentenced to one year in the State Penitentiary, and the other defendant being a first offender, was placed on probation. Richard E. Gerstein, State Attorney, and his staff are to be commended for the excellent manner in which this case was handled, as well as Judge George E. Schulz, who recognized the seriousness of this type of crime and its impact upon the community, in passing sentence on these culprits.

The above incident highlighted the existing problem of false and fraudulent insurance claims in Dade County.

The Grand Jury made an extensive investigation into this matter, hearing witnesses representing the various interests involved - attorneys, insurance company executives and investigators, doctors, etc. The most serious aspect of this problem is the effect it has upon premium rates for automobile and other liability insurance in Dade County. False and fraudulent claims, excessive jury verdicts, exorbitant doctor and hospital

bills, and padded automobile repair bills are a direct cause of high insurance rates. Despite popular belief to the contrary, the occasional hundred thousand dollar jury verdict is not the primary cause of high premium rates for insurance. However, these high verdicts influence the settlement of small claims in that the claimants demand more than they would have previously. Threat of suit causes insurance companies to settle claims that should be resisted.

Fringe operators in the legal and medical professions are guilty of unethical practices which largely contribute to this problem. Fortunately, they represent only a small number in both professions.

The problem which exists is one of ethics and not of law enforcement. It can be solved only through the concerted efforts of the Florida Bar and Florida Medical Association in cooperation with the local Bar and Medical Associations.

The procedure of the Florida Bar for handling complaints against lawyers charged with unethical practices is slow and cumbersome. The procedure for revocation or suspension of doctors' licenses for unethical practices is archaic and outmoded. Both procedures should be corrected by remedial measures of the State Supreme Court and the Legislature.

Ambulance chasing engaged in by fringe lawyers could be eliminated if the people of this county would refuse to employ lawyers who directly or through others solicit their cases. The solicitation of law suits is prohibited by the Code of Ethics and usually is engaged in by lawyers whose incompetence results in injury to the cause of their clients.

Testimony before the Grand Jury reveals that the greatest loss to the insurance companies occurs in those cases where claims are made and paid off in the under \$1000 bracket. Doctors and lawyers are not always involved in this type of claim. The general public frequently makes excessive claims for relatively minor damage and injury and insurance companies settle for the "nuisance value." The Grand Jury recommends strongly that insurance companies expend more effort in

investigating claims, no matter how small they may be. Resisting the fraudulent claim is a necessity if premium rates are ever to be reduced.

Insurance companies are a regulated industry and are governed by the laws of the State of Florida. However, the rate fixing provisions of such laws should be repealed as price fixing is contrary to free enterprise and the American way of life. Price fixing of insurance rates in effect is an ex parte procedure in which the people are not represented and have no voice.

Dade County is a large, densely populated urban area with the added traffic hazards caused by thousands of visiting motor vehicles. Statistics disclose a greater percentage of accidents, more claims for personal injury and property damage, and higher verdicts in large urban areas. Dade County cannot expect automobile and other liability insurance premium rates to be as low here as in other parts of the state, but if corrective measures are taken as herein pointed out, this problem can be alleviated.

RECOMMENDATIONS

We recommend:

1. The establishment of an investigative office in Dade County by the Florida Bar to investigate complaints of "ambulance chasing" and other unethical activity and make their findings available to the local Grievance Committees of the Bar.
2. That the statute governing the revocation or suspension of the right to practice medicine be enlarged so that it will encompass many improper activities not now included.
3. That a more vigorous effort be made by the various police departments and the hospitals to stop their employees from soliciting accident victims for certain attorneys and doctors, in violation of state law, and that all such violations be vigorously prosecuted.
4. An organized county-wide continuing educational program utilizing every form of media to alert the public to the problems of traffic safety and reduce the incidence of accidents.

5. Separation of the offices of State Treasurer and Insurance Commissioner and the creation of a Department of Insurance headed by a Commissioner with no other responsibilities.
6. Rate fixing provisions of the insurance laws of the State of Florida should be repealed and the fixing of insurance premium rates left to competitive free enterprise, or in the alternative:
 - (a) That the Insurance Commissioner publicize requests for increased insurance rates and that a public hearing be held before any decision is made increasing such rates.
 - (b) That the Commissioner employ more statisticians so that rate fixing can be based on the Insurance Department's own figures rather than those submitted by the insurance companies.
 - (c) That the Attorney General of the State of Florida be delegated by the State Legislature with the responsibility of representing the people of this State at such public hearings.

FLOOD CONTROL

Hurricane "Donna" and the easterly wave called "Florence" which swept over this section of the state last September, bringing with them torrential rains, caused a great amount of flooding in Dade County. Some areas of this county which had been spared by previous hurricanes and heavy rains were inundated with flood waters. In prior years, farm areas and some outlying residential areas have been flooded following a hurricane or excessive rainfall. However, this year not only were farm areas and outlying residential areas flooded, but large subdivisions containing more expensive homes were subjected to the ravages of flood waters.

We believe these conditions were brought about principally by reason of insufficient interest of local public officials in flood control in this community, despite the fact that engineers and farmers have made repeated attempts to obtain adequate flood control. As soon as the water drains off and flooded areas dry out, most of the plans and suggestions of interested groups for future protection of property would be cast aside and pigeon-holed. Some public officials tend to minimize the importance of flood control to this county. One of these officials stated before this Jury that only one hundred and ten homes were damaged by recent flood waters, and the expense of assuring that this would not happen was out of line to the damage done. This attitude is so absurd that it borders on the ridiculous. If the various groups of interested persons and local public officials in concerted action had put forth their best efforts to obtain and make use of maximum Federal, state and local money for this purpose, far greater progress could have been made in the Flood Control Program.

We believe this lack of vigorous unified effort has resulted in Dade County being far behind the counties to the north of us in development of the Flood Control Program. Of the millions of dollars which have been authorized for flood control in the Central and South Florida Flood Control District Areas, only approximately one half has been expended. Dade County has contributed some twelve million dollars to the Central and South Florida Flood Control District through local taxes collected for flood control, but has received back only seven million dollars expended for such purpose in this county.

In past years, our county has been shortsighted in failing to provide sufficient funds to supplement and augment the funds provided by State and Federal Governments for flood control programs. Local public officials appear to continually bog down in trivialities and to seemingly hope that the water control problem would vanish and disappear, thereby sparing Dade County of further floods. Where local work has been done, it has been inadequate and insufficient to meet the existing problem. Canals have been dug that begin nowhere and end nowhere. Many canals stop short of reaching their needed destination, usually bogging down by reason of right-of-way disagreements. The Cutler Drainage Canal would be an example of the latter.

As a result of the efforts of private citizens, particularly the Miami-Dade County Chamber of Commerce, some measure of unity is now being achieved. Their efforts should bring more money to Dade County so that the Central and South Florida Flood Control Program may be carried out.

Apart from the Central and South Florida Flood Control Program, this county has failed to provide adequate bridges across many of the local roads. The result has been for these roads to act as dams, causing flood waters to rise and flood many homes and residential areas.

The local maintenance forces to keep the relatively few small culverts open is inadequate. All the material taken from cleaning the culverts and ditches must be hauled away from the spot. At the present, Dade County has only seven trucks for this purpose where thirty are needed. The Grand Jury believes that the size of the maintenance force with an additional thirty trucks and drivers will be adequate for the dry years, but it is totally inadequate to handle the requirements of the county in the period of an emergency, such as was experienced this past September. Certainly, it should not take two or three weeks to open the roads which act as dams, clean the culverts, and do the other work necessary to drain the water from people's homes and property.

Local public officials should realize that every inch of habitable land must be fully utilized to take care of our prospective growth. Dade County is a narrow

isthmus with the Atlantic Ocean on the east and the Everglades on the west. Adequate drainage must be afforded to the public if we are to expand and provide for an increased population. Certainly, home owners should have the right to rely on our county government, when they obtain a building permit and certificate of occupancy, that their homes will not be flooded as a result of some man made obstacle.

RECOMMENDATIONS

We recommend:

1. That the local maintenance force be expanded to include, if necessary, a ready reserve made up of public employees from other departments of government to combat flood conditions in this county when they may occur.
2. That the Central and South Florida Flood Control Program be expedited by our county officials so that a fair share of monies will be expended in Dade County.
3. That local public officials provide the necessary county funds to supplement the South Florida Flood Control Program.
4. That adequate drainage structures, approved by competent engineers, be provided under existing roads which now act as dams.
5. That local public officials remain alert to the flood control problem and never permit it to die out when we dry out. If necessary, that a Water Control Authority be created, either appointive or elective, which will keep this problem well before the public.

ALLEGED POLICE BRUTALITY IN THE SOUTH MIAMI
POLICE DEPARTMENT

The Grand Jury made an investigation into the alleged manhandling of a citizen of Dade County who was arrested in South Miami on a warrant for a traffic violation.

The investigation revealed that an automobile driver was observed by South Miami police officers running a "red light." The officers gave chase but because of narrow roads were unable to apprehend the traffic violator prior to his driving into his own yard. The driver ordered the police officers off of the property, and the police officers left the scene. The following morning, they obtained a warrant for the driver's arrest. Returning to the driver's home, armed with the warrant, the police officers placed the driver under arrest. The evidence did not reflect that more force was used than was necessary to bring the driver to the police station for regular booking procedures. Because of his own actions, the driver was handcuffed and taken to the police station in trousers, without shirt, wallet or shoes. The driver's three children were also taken to the police station by the police officers. From all circumstances, including testimony of disinterested witnesses, it appears that the police officers used only the degree of force necessary to bring the driver to the police station.

The children were in no way mistreated by the police officers. Once at the station, all the police procedures were regular except those that were varied to aid the children. The driver was unable to immediately post bond, but he was not placed in a cell until after his wife had taken the children from the police station. All action on the part of the police officers was performed in compliance with the law. However, the Grand Jury does believe that the activity of the police officers indicated a lack of tact and understanding.

Our investigation of this matter leads us to the conclusion that police officers should treat traffic violators with more courtesy and consideration and not with the same manner and severity used in arresting persons for felonies or other serious crimes. This should be done even though the traffic violator is obnoxious in his manner.

The Grand Jury has examined the Manual of Standard Operating Procedures for the Police and Fire Departments of Miami Shores Village and we are impressed with these regulations concerning the patrolmen's duties in arresting traffic violators. Rule 12 instructs that the officers use caution and be on the alert, that the officer never allow the violator to lead the police officer into an argument, that the patrolmen should not abuse a violator, and that the police officer should be polite and courteous at all times. The Police Department of the City of South Miami did not have rules and regulations to guide its personnel at the time of this incident, but since then has instituted similar procedures.

The testimony before the Grand Jury indicates that once the police officers of South Miami receive their initial training and instructions, they are not given further training. We believe that every police department should adopt a program of continuous training of police officers in all facets of their work. We believe that police officers, equipped with proper rules and regulations and given a continuous program of training, would be better able to handle difficult persons under circumstances such as occurred here.

RECOMMENDATIONS

We recommend:

1. That each law enforcement agency in Dade County adopt a code of regulations which will serve as a guide to every officer in the performance of his duties.
2. That the law be re-examined by competent authorities to set up new procedures for the apprehension of traffic violators by virtue of a warrant.
3. That police officers be given periodic training and re-training on the best procedures to follow in all police work.

In conclusion, we would like to quote from the Manual of Standard Operating Procedures for the Police and Fire Departments of Miami Shores Village, Rule 18, page 14, which states:

"Maintain good public relations as a good public relations policy is one of any departments most valuable assets."

Section D of that Rule states:

"Public relations are one of the most important duties of a police officer. It is only through good public relations that police officers will gain recognition as being members of a profession."

HUMANE SOCIETY OF GREATER MIAMI

This Grand Jury received complaints concerning the operation of the Humane Society of Greater Miami. The basis of the Grand Jury's jurisdiction is that the Humane Society receives funds from local governmental entities. These complaints concerned incidents which followed the report of the Spring Term 1959 Grand Jury. That Grand Jury found that:

"Considering the number of animals handled by the Humane Society, the few cases for complaint speak well for the operation. The most serious charge, that of mis-diagnosis of sick animals, will be corrected when a full-time Veterinarian is hired by the Humane Society. This is presently contemplated."

This Grand Jury can report that a full time Veterinarian has been hired by the Humane Society; that he examines all dogs before they are released for "adoption" into the homes of Dade County. Testimony from a reputable Veterinarian reveals that while numerous sick animals were brought to him shortly after these "adoptions" in years past, the number since the hiring of a full time Veterinarian has been negligible.

However, testimony before this Jury reveals that the Veterinarian does not examine those animals brought in for quarantine or control purposes, such as animals suspected of rabies. Also, the testimony revealed that these animals are permitted to mingle with other dogs in quarantine, particularly during the exercise period. Because of the seriousness of rabies and its treatment, we strongly recommend that the Veterinarian examine these dogs when they are brought to the Humane Society shelter and that these dogs not be permitted to mingle regardless of the opinion of other non-veterinarian staff members.

There is also testimony before this Grand Jury that at least on one occasion a dog suspected of having rabies was put to death the day after he entered the shelter. This happened in spite of the fact that a Veterinarian had recommended that the dog be put in quarantine.

There is other testimony before the Jury that on one occasion when a dog was picked up and taken to the Humane Society, the owner of the dog went to the Humane Society and identified the animal, but not having the money to pay the board bill, requested that they permit him to wait four days until his next pay check was due.

When he returned to the Humane Society, he discovered that the animal had been put to sleep.

These two incidents, particularly the first, indicate that very rigid controls should be established at the Humane Society for the accounting of dogs or other animals which they have in their charge. It is certainly not humane to put a family pet to sleep when the only excuse can be that the accounting controls fell down, and in the first instance because of the seriousness of rabies, no excuse is sufficient.

In Dade County as elsewhere this problem can be divided into two general classifications:

1. Control of loose animals for health purposes, and
2. The humane treatment of all animals and the placing of suitable animals for adoption into private homes.

There are those people who would seek to divide this work into separate agencies and turn over to government authorities the animal control section. It is not the desire of this Grand Jury to see this happen in Dade County for we know that this would be an increased tax burden on the community. However, if the rigid control necessary to protect the public is not strictly adhered to by the Humane Society of Greater Miami, this change will become necessary.

An inspection of the premises was conducted by our investigators. The photographs taken by them and other information which the Jury received revealed that the non-public areas of the Humane Society were not as clean as is desirable in a shelter of this type. It was also discovered that the food served the animals was "buggy" and contained maggots. Unless the non-public areas, that is the Quarantine Section and the Pre-Adoption Section, are kept clean, and unless wholesome food is served the animals, diseases can spread throughout the animals in the Humane Society's charge. Some evidence of this disease condition was apparent.

There is testimony before the Jury that when employees call attention to the irregularities as above indicated, the management of the Humane Society make little or no effort to change the system. As an example, merely publishing a new memorandum on the bulletin board and making no effort to see that the new rule was carried out,

RECOMMENDATIONS

We recommend:

1. That rigid, strict controls over the accounting for animals in the Humane Society's charge shall be adopted.
2. That the Board of Directors of the Humane Society of Greater Miami re-examine the managerial set-up of the Society with the view of incorporating strict accounting of animal controls, and stricter management of the general operation of the Society.
3. That our successors in office continue this investigation to insure that these recommendations are carried out.

METROPOLITAN PUBLIC SAFETY DEPARTMENT BUILDING & JAIL

This Grand Jury as part of its regular duties made an inspection of the new Metropolitan Public Safety Department Building and Jail. While this building is not yet completed and while we can only speak as lay people in this field, it would appear that a great deal of thought and consideration has been given these two buildings.

The Metropolitan Public Safety Department Building has been so designed that the interior is flexible to meet the changing needs of Dade County in the future. As to the Jail Building, it will be of maximum security for the incarceration of prisoners who may be housed therein, while at the same time assuring these persons clean and healthful surroundings.

JACKSON MEMORIAL HOSPITAL

This Grand Jury previously reported to the court and made public the results of its investigation of the operation of Jackson Memorial Hospital. In our Interim Report, we recognized the fine medical service performed at Jackson Memorial Hospital for the people of Dade County. However, the Jury did point out certain administrative deficiencies and made several recommendations, to-wit:

1. That the hospital re-examine its personnel procedures and practices relating to job classification, disciplinary action against employees, and the discharging of employees.

2. Personnel procedures and practices in the departments supervised by the Comptroller at Jackson Memorial Hospital should be revised and improved to insure the proper classification of employees.

3. A fair hearing should be conducted in all cases where disciplinary action is taken or an employee is discharged.

4. A permanent record should be maintained of every hospital account that is written off for charity purposes and the reasons therefor. Frequent surveys of charged off records should be made by the County Internal Auditor to determine if proper business practices are being followed.

5. A Collection Department should be established for Jackson Memorial Hospital with a competent Administrator, and the use of private collection agencies discontinued. Adequate procedures should be promulgated to determine the ability of patients to pay for hospital services.

The Grand Jury in that report indicated that it would comment on other matters which came up during the investigation. At the time of our investigation, it was learned that the Internal Auditing Department of Dade County was making its own investigation.

The Internal Auditor recommended that the hospital establish rules or criteria for the identification of patients. This criteria would be used to determine who would

get charity treatment at the hospital. This procedure would enable the Board of County Commissioners to approve the charity accounts with each patient's record available for their immediate inspection. The Internal Auditor also recommended that a competitive bid system be established for the purchase of hospital supplies; that more accurate inventory records be kept, and that new administrative procedures be established for checking all purchases made at the hospital.

The Grand Jury concurs in the opinion of the Internal Auditing Department. We are concerned, for example, that patients receive medical treatment without that treatment being accounted for on the business records of the hospital. That under the present system, it is difficult and time consuming to secure information from the business records, and is difficult to verify any of the information on the records.

From the Grand Jury's investigation, it is evident there is a lack of cooperation between the Internal Auditing Department and the Comptroller Office of the hospital. Each recommendation of the Internal Auditing Department has been met at the hospital with a negative attitude. From our investigation and from the facts as related above, it is obvious that the business procedures at Jackson Memorial Hospital are out of date. The hospital is attempting to operate as it did many years ago when it was small, but now the hospital operates with a budget greater than that of many cities. At the present time, the County Finance Department controls the business administration of other departments under the Metropolitan Charter. If this Finance Department were to take over the business operation of Jackson Memorial Hospital, the doctors at the hospital would be able to devote full time to the care and treatment of patients.

RECOMMENDATION

It is the recommendation of this Grand Jury that the entire business administration of Jackson Memorial Hospital be turned over to the County Finance Department forthwith.

THE UNITED FUND

The Grand Jury conducted an investigation into the operation of the United Fund of Dade County and earlier in the session rendered an Interim Report. At that time, we found that the United Fund had recently undergone a reorganization effecting changes in by-laws and policy, and was operating on a stringent budget in an effort to correct its financial problems.

Among the new policies instituted were:

1. Mandatory meetings of the Board of Directors.
2. Placing the Executive Director under the direct supervision and control of the Executive Committee.
3. A complete annual audit to be made and distributed to the Executive Committee and other officers.
4. A statement of financial condition to be issued and distributed quarterly.

We recommended that the United Fund adopt realistic goals and establish improved procedures for the collection of contributions pledged. We also recommended that a professional administrator with many years of experience in large urban areas be employed as Director of the United Fund.

The difficulties encountered by the United Fund in the past can be attributed largely to the lack of experienced administration. The position of Director of the United Fund calls for a full time, experienced, well qualified, and adequately compensated executive.

The reorganization of the United Fund has continued and it now appears that its future success will be assured. We wish to commend the many fine citizens of this community who have dedicated their services to this work and who have contributed unselfishly of their time and money to make the United Fund a success.

FAILURE OF CERTAIN POLICE OFFICERS TO WAIVE
IMMUNITY BEFORE THE GRAND JURY AND SUBSEQUENT
ACTION OF THE MIAMI CIVIL SERVICE BOARD

The City of Miami as part of its Civil Service Code has established Rule XVI, Section 13, which reads as follows:

"Section 13. Dismissal: Where any officer or employee in the classified service of the City of Miami who should appear before a Grand Jury or Juries and refuse to sign an immunity waiver in advance of testimony before such Grand Jury or Juries on the ground of self-incrimination under the Fifth Amendment to the United States Constitution and the Constitution of the State of Florida, on all matters concerning the property, government or affairs of the City, that such conduct shall constitute a breach of duty and that said employee shall be dismissed from the classified service of the City of Miami."

Early in our term, at the request of the Miami City Manager, we brought before the Grand Jury three police officers who had been charged with violation of Civil Service Regulations and were to be tried before the Civil Service Board. When the officers were called before the Grand Jury, they refused to sign Waivers of Immunity. Therefore, pursuant to Rule XVI, Section 13, this additional charge was made against them in the proceedings held before the Civil Service Board. The officers advised the Grand Jury and the Civil Service Board that they were unwilling at the time of their appearance before the Grand Jury to sign the Waivers of Immunity, but upon completion of the Civil Service Board's hearing, they would be willing to sign the Waivers of Immunity.

The Civil Service Board ruled in favor of the officers that this was not a sufficient basis to discharge them for violation of Rule XVI, Section 13.

We do not feel that any Grand Jury should attempt to supercede an administrative tribunal or court, nor second guess its rulings. Nonetheless, we are constrained to comment that this ruling renders completely impotent the effective enforcement of Rule XVI, Section 13, requiring Civil Service personnel to waive immunity. The rule was not intended to be adhered to upon the whim or caprice of the witness, at a time to his liking.

We recommend that Rule XVI, Section 13, be enlarged so as to include as a basis for dismissal the refusal to sign Waivers of Immunity before the Grand Jury on any ground whatsoever, not merely on the ground of self-incrimination.

TRAFFIC SAFETY

This Grand Jury became concerned over the rising death rate from motor vehicular accidents in the streets and highways of our community. Previous Grand Juries have examined this field and have made their recommendations. We felt it our duty to investigate one facet of this death rate, that is, the effect of alcohol and drugs upon the drivers of motor vehicles involved in fatal accidents.

From the statistics furnished by the Dade County Medical Examiner's Office, we learned that alcohol was a major factor in more than fifty percent of the fatal traffic accidents which occurred in our area. At the present time, various machines and equipment exist for the testing of the amount of alcohol in a person's system. The two major methods of testing the amount of alcohol a person has in his system are by an examination of either his breath or his blood. Our courts permit the introduction of the results of the examination of either a person's breath or examination of the blood stream as corroborative evidence, that is evidence which tends to support the arresting officer's opinion. When the machinery for testing the breath was first introduced, our courts required a very high reading on the machine before it would suffice for conviction. This requirement of a high reading on the machine persists in the decisions of most of the courts in our area today.

Considering first those cases not involving manslaughter, the law is that a person should not operate his motor vehicle while under the influence of alcohol to the extent that his normal faculties are impaired. Under the high test as previously mentioned, a person of average height and weight would have to have in his system six ounces of 100 proof whiskey or a reading on the machine which examines the breath of .150 percent to sustain a conviction.

Considering secondly the law on manslaughter, a defendant to be guilty of manslaughter by reason of driving under the influence of alcohol must be intoxicated. The average driver would have to have approximately nine ounces of 100 proof whiskey or its equivalent in his system, which would attain a reading on a machine designed to test the breath of .220 percent, in order for this evidence to be introduced and sustain a conviction.

From the evidence gathered by this Grand Jury we believe these standards are too high. In 1957, for example, 67 percent of the drivers killed in automobile accidents showed the presence of alcohol in their systems when tested. Under our present laws, 43 percent of those killed would not have been guilty of driving while under the influence of alcohol, and 75 percent would not have been guilty had they been tried for manslaughter. From the figures gathered this year, at the time of our investigation, some 55 percent of the drivers at fault and involved in traffic fatalities had been drinking. Of this number 39 percent of the drivers tested, who were at fault and had been drinking, would have been acquitted of driving while under the influence of intoxicating beverages. These figures indicate a consistency or correlation between the 1957 figures and the figures to date this year.

From the medical testimony the Grand Jury received, it is the opinion of experts that a person's normal faculties become impaired after having consumed far less alcohol than is presently required by our courts. It is also their opinion that a person becomes intoxicated after having consumed fewer drinks than is presently required for the evidence from the machinery to sustain a conviction in our courts. In addition to the expert testimony, experiments were conducted in the Grand Jury's presence which substantiated the opinions of the experts.

In addition to the evidence gathered in the alcoholic driver field, the Jury also examined the law and received testimony concerning those persons driving while under the influence of drugs. At the present time, our law in the non-manslaughter cases is limited to those persons driving while under the influence of alcohol or narcotic drugs. In this day of medical and chemical advancement, many medicines and drugs are on the market which cause an intoxicating effect on people. However, these new drugs are not considered narcotics. It is our opinion that the law in this regard should be changed so that a person who operates a motor vehicle while under the influence of any beverage, drug or substance to the extent that their normal faculties become impaired should be found guilty and not just those persons who have been taking narcotic drugs or drinking alcoholic beverages. In regard to

manslaughter cases, the law is void for all causes save intoxicating beverages.

We believe the law in regard to manslaughter cases should be changed to include intoxication as a result of drinking alcoholic beverages, taking narcotic drugs, or any other substance which produces an intoxicating effect on the human being.

Our concern over the increasing traffic toll in Dade County convinces this Jury that all persons who are stopped upon our highways and who in the opinion of the arresting officer have been drinking or taking some intoxicating drug should be required to take a test to determine the amount of alcohol or intoxicating drug in their systems. This is the so-called "Implied Consent Doctrine." That is, our courts have ruled that it is a privilege to operate a motor vehicle on the streets and highways of our state. Therefore, the law should be that a person when he drives on these streets and highways impliedly gives his consent to the taking of these tests. Several states have already adopted such a law. We strongly urge that our State Legislature adopt a similar statute.

To safeguard the public, the Legislature may desire to set up a separate office of the government to administer the test, whether they be by a drunkometer machine or by testing a sample of the driver's blood. In any event, the number of cars on our existing highways, the miles travelled by all persons on the road, points to the need for strict law enforcement over all facets of traffic safety and demands that the unsafe driver be eliminated from our roads.

RECOMMENDATIONS

We recommend:

1. That the State Legislature pass a statute requiring that automobile drivers be required to take a test to determine the amount of alcohol or intoxicants in their blood streams under the so-called "Implied Consent Doctrine" or forfeit their drivers' licenses.
2. That the Legislature adopt a standard for determining at which point all persons will be considered as having their normal faculties impaired.

3. That in setting this standard, the State Legislature consult the American Medical Association and other experts in determining what that standard should be.

4. That the law be changed whereby the results of such tests be primary evidence of the driver's impairment rather than mere corroboration of the arresting officer's opinion as is the case at the present time.

5. That the law be changed so that a person will be found guilty of operating a motor vehicle while his normal faculties were impaired for any reason.

6. That in manslaughter cases the test for intoxication be similarly reduced in line with the opinion of the American Medical Association and other experts.

7. That the law in manslaughter cases be expanded to include any substance which results in an intoxicating effect upon a human being and not just alcohol.

8. That all traffic safety rules should be vigorously enforced for the protection of all citizens of our community.

MISCELLANEOUS INVESTIGATIONS

The Grand Jury received numerous complaints relating to various matters which did not require full scale investigations and, therefore, are not included in this Final Report. Such matters are not included for the reason that no wrongdoing was found on the part of anyone and the mere mention of names or the problems involved might tend to cast a cloud of suspicion over innocent persons.

This Grand Jury and former Grand Juries have received complaints from persons who are dissatisfied with the decision of the courts in a law suit to which they were parties. These persons seek to have the Grand Jury review a court decision which is unfavorable to them. Apparently, they act under the mistaken belief that the Grand Jury has the power to review such decisions and give them some type of relief. We wish to point out that the Grand Jury has absolutely no authority or jurisdiction to review the decisions of any court. The decisions of a court can only be reviewed by a superior court of competent appellate jurisdiction. We mention this matter in order to clear up a misunderstanding with the hope that such complaints will not be directed to the Grand Jury in the future.

The Grand Jury received the usual number of complaints from irresponsible persons who continue to plague each Grand Jury with their imagined grievances. Frequently, complaints come from responsible citizens who base their accusations on a misunderstanding of the facts or the law.

We mention this to inform the people of Dade County that all matters referred to the Grand Jury receive consideration and appropriate attention.

IN APPRECIATION TO THE COURT

We wish to express our sincere appreciation to the Honorable J. Fritz Gordon, Circuit Judge assigned to this term of the Grand Jury. When we were impaneled, Judge Gordon gave the Grand Jury an impressive charge in which he instructed us fully as to our duties and responsibilities. We found this able and distinguished Jurist to be considerate and courteous, always maintaining dignity and decorum in keeping with the highest tradition of the judiciary.

E. B. LEATHERMAN - CLERK OF THE CIRCUIT COURT

The Honorable E. B. Leatherman, Clerk of the Circuit Court, and his deputies have been cooperative and helpful to this Grand Jury and we wish to express our appreciation to them.


ADMINISTRATIVE ASSISTANT - BAILIFF

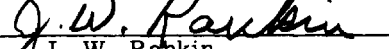
The Grand Jury's work was expedited and facilitated by the effort of its Administrative Assistant, Eleanor M. Robinson, and its Bailiff, W. Rufus Holzbaur. Both are to be commended for their efficient manner and cooperative attitude in the performance of their duties.

RICHARD E. GERSTEIN - STATE ATTORNEY

Just as the six Grand Juries preceding this Grand Jury have done, we wish to commend Honorable Richard E. Gerstein, State Attorney, and his staff for their invaluable advice, assistance and full and complete cooperation during our term.

Respectfully submitted,


Eugene Mumpower, Foreman
Dade County Grand Jury
Spring Term 1960

Attest: 
J. W. Rankin
Clerk

Date: November 8, 1960