

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

SPRING TERM A.D. 1980

FINAL REPORT OF THE GRAND JURY

FILED

NOVEMBER 12, 1980

Circuit Judge Presiding

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NURSING HOMES

I. INTRODUCTION

The Final Report of the Spring Term 1979 Grand Jury, which was issued in November, 1979, included an extensive analysis of nursing homes in Dade County and of the agencies responsible for their regulation. The investigation which preceded the Report was comprehensive and its conclusions and recommendations specific. The fourth of the recommendations was the following:

This Grand Jury has for the first time gathered all available material regarding each nursing home for a particular time frame and the process has enabled us to reach conclusions relative to the inspection process and the homes themselves. It is apparent to us that this compilation process was long overdue, and it is a process that must be repeated annually. It is our recommendation that once each year an objective study be made of the reports of all of the regulatory agencies so that conclusions may be reached as to the effectiveness of the Inspectors and the quality of the Homes. We leave it to the health care community to identify the appropriate forum for this annual process. Absent the identification of such a forum, we recommend that the Dade County Grand Jury undertake that task in the fall of 1980.

As we shall document, that Grand Jury Report has prompted significant and positive steps with respect to the regulation of quality of care in nursing homes. The impact of the Report has been extensive and we as a Grand Jury are gratified to observe that our work can provide the impetus for change in investigations of conditions which impact upon the health, safety and welfare of our community, and in this instance upon the lives of the more than five thousand persons who reside in the thirty-six nursing homes in Dade County.

And yet, while many of our predecessor Grand Jury's recommendations have been acted upon, we learned early in our Term that our local health care community did not identify an

agency or forum to implement on an annual basis the process of reviewing all of the reports of the various agencies which regulate nursing homes. This being the case, we have followed the recommendation of the Spring Term 1979 Grand Jury and we have undertaken the task of reviewing all of the reports of all of the agencies charged with nursing home inspection and regulation, from July 1979 to the present.

Below we present our findings with respect to the status of each of the specific recommendations made in the November, 1979 Report. And we reiterate the need for this to be done on an annual basis by an objective agency in the health care field. We also reiterate the Grand Jury's finding that the Dade Health Systems Agency or the Nursing Home Ombudsman Committee are appropriate forums for the annual implementation of this process.

II. THE GRAND JURY INVESTIGATION

In order to assess the progress made during the past year we have heard testimony from representatives of the various monitoring agencies charged with nursing home inspections, as well as from other individuals with expertise in the long term health care field. Also, we have subpoenaed all of the inspection reports of all of the monitoring agencies for the period July, 1979 to the present and we have compiled chronological summaries of those inspections and reports. As was the procedure used by the Spring Term 1979 Grand Jury, these summaries will be issued in a separate volume simultaneous to the publication of our Final Report.

In the Sections which follow, we will consider separately each of the Recommendations made in November of 1979.

III. THE MONITORING AGENCIES

There are presently three agencies responsible for the inspection and monitoring of conditions within Dade's nursing homes.

A. The Office of Licensure and Certification

The Office of Licensure and Certification, a component of the Department of Health and Rehabilitative Services, has primary responsibility for monitoring a nursing home's conformance to the mandates of Florida Law. The 1979 Grand Jury's first recommendation was as follows:

(1) The Office of Licensure and Certification must be provided with new direction and new initiative which will ensure that a failure to meet minimum standards of patient care will result in punitive sanction. Specifically, Licensure and Certification inspections must be more frequent and less predictable. The State Director of Licensure and Certification stated that he believed inspections were being conducted quarterly and this Grand Jury specifically finds his belief to be erroneous. He further indicated an inadequate understanding of the range of legal sanctions available to him under Chapter 400 and totally inadequate initiative in taking legal action against inferior homes. 1979 Legislation has broadened the sanctions available to the Office of Licensure and Certification, but these sanctions will have no meaning without a vigorous state-wide Director, or in the alternative by delegation of the power to the regional offices coupled with vigorous enforcement at that level ...

We also find the need for greater aggressiveness on the part of the attorneys who advise Licensure and Certification and who initiate administrative sanctions and injunctive litigation.

We are pleased to find that the Department of Health and Rehabilitative Services has taken comprehensive steps to implement this recommendation, and we particularly commend the Assistant Secretary of HRS, Larry Overton, who, in response to the Grand Jury Report, was given the responsibility of heading a Departmental Task Force on Nursing Homes. The actions of the Department of Health and Rehabilitative Services, pursuant to the Task Force recommendations, included the following:

(1) The central office of Licensure and Certification was moved from Jacksonville to Tallahassee and a new Director of the Office was selected.

(2) A District XI (Dade and Monroe Counties) Pilot Program is to be instituted shortly in direct response to the Grand Jury's recommendation with regard to a "delegation of power to the regional offices coupled with vigorous enforcement at that level." This Pilot, to begin in January of 1981, will provide:

- Establishment of a Long-Term Care Administrator position in District XI to report to the District Administrator creating a District Office of Long-Term Care Administration;
- Placement of all existing District units relating to nursing homes, ACLFs and other long-term care facilities under the direct line authority of the Long-Term Care Administrator. This includes the medical review team, the appropriate county health department unit or units, the Aging and Adult Services staff providing services in long-term care facilities, the Adult Payments component of Social and Economic Services which is responsible for placement of Medicaid patients, and the ACLF licensure unit;
- In addition to the existing departmental units listed above, placement of two new functions under the District Office of Long-Term Care Administration - a Pre-admission Screening Unit comprised of a physician, nurse, social worker and others as needed would review each Medicaid applicant for admission to nursing home care and make eligibility determination, hopefully diverting some applicants to community alternatives. The Quality Assurance Unit would have responsibility for the ongoing monitoring of the quality of care provided by each facility and the progress of individual patients toward discharge;
- Assignment of the licensure and certification responsibility for all nursing home facilities in District XI to the District Office of Long-Term Care Administration. Appropriate staff would be reallocated from the Miami Regional Office of Licensure and Certification to the District.

In the event the Pilot is successful in Dade County, as we fully expect will be the case, it will be adopted state-wide.

(3) An HRS departmental management panel has been established to consider and resolve major nursing home and other long-term care program issues.

(4) Two additional Licensure and Certification attorney positions have been created with one to function on a state-wide basis and with the other assigned to Dade County.

As to the Grand Jury's finding that the need exists for "greater aggressiveness" in the initiation of administrative sanctions and injunctive litigation, the following table presents the actions taken by HRS since November of 1979. The table should be compared to the Table included in the 1979 Report covering similar fines levied during the 1976-1979 period covered by that Report:

<u>NAME OF FACILITY</u>	<u>DISCREPANCY</u>	<u>FINE</u>	<u>DATE</u>
Four Freedoms Manor	Failure to post inspection report	\$ 500	1/80
Four Freedoms Manor	Failure to Operate in Safe and Sanitary manner	1,000	7/80
Four Freedoms Manor	Failure to correct deficiencies	1,000	7/80
Heritage House	Failure to correct deficiencies	1,100	3/80
Jackson Heights Miami Beach	Unlicensed Nurses	10,000	2/80
	Failure to Correct deficiencies	1,400	3/80
North Shore	Nurse Shortage	2,000	11/79
North Shore	Failure to provide adequate care	6,200	2/80
North Shore	Failure to provide adequate care	100	2/80
North Shore	Failure to correct deficiencies	36,000	5/80
North Shore	Patient Care	2,500	10/80
Palms	Failure to correct deficiencies	1,250	11/79
Towne House	Patient Care	1,000	7/80
Treasure Isle	Unlicensed Nurses	5,000	2/80

The 1979 Report had listed all of the fines imposed from early 1976 through late 1979 and observed:

Despite evidence of conditions calling for aggressive action, a mere nineteen administrative fines in an average amount of \$650 have been imposed over four years upon 38 nursing homes housing 5,000 residents. And the option of injunctive suits to force changes in conditions has never been utilized.

We are pleased to observe that the list presented above, covering a period of less than one year, includes fourteen fines in an average amount of \$4,500 or of \$2,100 exclusive of the disproportionately large \$36,000 fine levied upon North Shore Nursing Home in May of 1980. Both the average annual number of fines and the average amount of fines have increased four-fold since the appearance of the 1979 Grand Jury Report.

And we are also pleased to note that other aggressive steps have been taken as well. In the period since the Report appeared, moratoriums on new admissions have been imposed on seven nursing homes pending their taking remedial actions with respect to deficiencies.

The second Recommendation made by the 1979 Report also related to the role of Licensure and Certification, as did the third:

(2) A method must be immediately devised which will ensure that Licensure and Certification review the findings of all inspection authorities and that its legal sanctions available pursuant to Chapter 400 be invoked on behalf of those other agencies, which do not have available such sanctions. The local Office of Licensure and Certification ensured this Grand Jury that it received and reviewed findings of Health Department inspections, yet the files submitted to us by Licensure and Certification did not contain copies of those reports.

(3) We have found that nursing homes vary tremendously in the quality of care they provide. We further find that the Inspectors fail to adequately respond to the greater need for greater vigilance in those homes which are mediocre. The Licensure and Certification method of conducting one annual inspection at a predictable point in time each year may barely meet the statutory requirement, but for many homes it is clear that the bare statutory minimum is absolutely inadequate as a control on quality of care and that several in-depth inspections within a year are required.

We find that Licensure and Certification has, during 1979-1980, continued to conduct one annual inspection each year at almost precisely the same point in time, so that "only the

most inattentive of nursing home Administrators could fail to note that the inspections occur at the same time each year for each facility." There appears to have been no attempt to either increase the number of full inspections or to vary their scheduling. There also has been no variation in the nature of the inspections, which have been described by one observer as a "Seventeenth Century minuet." As the chronological summaries of the reports indicate, for example, patients are described as "well-groomed" with monotonous repetitiveness. When, in one nursing home, we find that "patients appeared groomed some more attractively than others" this observation acquires the dimension of scathing criticism.

Yet while many of the 1979 Grand Jury criticisms of the Licensure and Certification inspection process are still unaddressed, it should be remembered that the Pilot Program will, within weeks, provide the opportunity to reassess these procedures and, given the responsiveness of HRS to date, we are optimistic that the appropriate reforms will be implemented. And with respect to interagency communication, we note the creation of an Interprogrammatic Nursing Home Subcommittee which has created an interagency team of representatives of the various monitoring agencies to inspect particular facilities and to pool resources and information.

B. The Dade County Health Department

The 1979 Grand Jury Report commended the performance of the Health Department, whose responsibility involves monitoring of sanitary conditions, subsequent to a point in time when William Garrett was given responsibility for the unit. We are pleased to note that Mr. Garrett's responsibilities have been increased and that he has also been appointed Chairman of the Interprogrammatic Nursing Home Subcommittee mentioned above. Other monitoring agencies can learn much from his vigorous and thorough approach to nursing home inspections.

We do, however, find that the Health Department nursing home inspection process is woefully understaffed, with the result being that it is virtually impossible for the three inspectors, who are also responsible for the inspection of hospitals, adult congregate living facilities and ambulance services, to allocate as much time to nursing homes as should be allocated. The result is that only those nursing homes with histories of noncompliance are afforded regular inspections.

C. The Professional Standards Review Organization (PSRO)

The 1979 Grand Jury Report described the PSRO function as follows:

The PSRO is a federally-funded agency which has contracted with the Department of Health and Rehabilitative Services to provide the utilization review process, which is designed to classify patients for the purpose of determining their needed level of care, and the level of Medicaid reimbursement they will receive, thus assuming the previous role of the HRS Medical Team.

The terms of PSRO's contract with HRS also indicates that PSRO will assume responsibility for the overall assessment of quality of care in individual nursing homes, and the Organization has indicated that it feels competent to assume that responsibility.

This Grand Jury has reviewed the instrument to be utilized by PSRO, and received testimony relative to the present potential capability for PSRO's performing a regular and meaningful assessment of quality of care in individual nursing homes, and we find that capability to be non-existent at this point in time. The instrument developed by PSRO is designed for utilization review of individual patients and not for the evaluation of entire facilities. Furthermore, the PSRO review process is not presently planned or intended to perform quality of care reviews of total facilities. The Medical Team is now being phased out of the evaluation process and PSRO shares the Medical Team's handicap of lack of a range of sanctions. The absence of an effective means for communication of negative findings to Licensure and Certification for administrative action, now coupled with a lack of a PSRO plan for facility assessments, may potentially diminish Dade County's capability for meaningful and ongoing monitoring of nursing homes.

We view a commitment by PSRO to the undertaking of facility reviews utilizing a competent and sensitive instrument prepared for that purpose

to be essential, as our Recommendations at the conclusion of this Report will make perfectly clear.

And the Grand Jury's fifth Recommendation was as follows:

(5) In addition to finding fault with the inspection process, we have found that the criteria inspected do not adequately measure quality of life in our nursing homes and that the meeting of bare minimum physical standards in no way assures that residents are not being warehoused in facilities providing drab, insensitive and lonely existences.

Our experiment with the QES (QES is a nursing home evaluation test which, according to the 1979 Report, "looks beyond compliance with structurally based minimum standards of care and focuses on the process of care") indicates that it offers the potential for adding a dimension for the evaluation of quality of life in our nursing homes that is much needed. We also find, coincidentally, that the Professional Standards Review Organization is about to undertake the function of quality of care review as a function ancillary to its utilization review process, but that PSRO currently lacks an instrument sensitive to all dimensions of quality of life in nursing homes and that it adapt portions of the QES instrument for this purpose. We then further recommend that this instrument be administered in each nursing home at least once annually.

We find specifically that this recommendation has not been acted upon.

In 1979 the PSRO Administrator stated that that organization would assess quality of care in individual nursing homes and that the use of new or additional assessment methods was unnecessary. While we appreciate the evident difficulties that PSRO has experienced in introducing their utilization review process to Dade's nursing homes, we fear that PSRO appears to be neither capable nor interested in expanding their role to that of contributing to the pool of information relating to quality of care in nursing homes. We find this to be extremely unfortunate given the agency's access to homes and the opportunity to perpetuate and expand the quality of care review process performed by the HRS Medical Team which PSRO replaced.

The phasing out of the HRS Medical Team, and its replacement by PSRO, has resulted in the unfortunate reality that the pool of information permitting the assessment of quality of care has decreased, rather than increased, since November of 1979.

IV. THE NURSING HOMES

The 1979 Grand Jury made the following findings as to the Homes:

1. As might be expected, the quality of care in Dade County nursing homes varies greatly. Some homes consistently provide very good quality of care; others generally provide good quality of care; still others do not generally provide acceptable quality of care; and yet others consistently provide very poor and unacceptable quality of care.
2. Most nursing home patients, approximately 60%, reside in homes which either do not generally provide acceptable quality of care or which consistently provide very poor and unacceptable quality of care. The average nursing home resident resides in a facility which is at best mediocre.
3. Inadequate quality of care tends to predominate in larger homes and in those homes with large proportions of Medicaid patients. Acceptable or good quality of care is more likely to be found in smaller homes and in those homes with high proportions of private patients.
4. While in general Dade County's nursing homes tend to meet minimum standards for physical safety for the residents and minimum standards of physician and nursing care, the homes are seriously deficient in meeting the social and mental needs of the residents. Most nursing home residents are housed in drab surroundings and can look forward only to brief interaction with poorly trained and generally insensitive nursing aides and they can expect few if any enjoyable activities. Since most nursing homes residents have little or no interaction with visitors or the world outside, the effect of months and years of mental and social inactivity accelerates, rather than retards, the deterioration of the average nursing home resident.

The 1979 Nursing Home Report also observed:

We have found that it is, at best, difficult to identify with precision the level of quality of care in a nursing home. Due to the short-

comings in the monitoring process, it is critically important that the monitoring process be revised so that in the future the public may be provided with timely and accurate information regarding the quality of life in nursing homes.

Underlying this observation was the hope that (1) an agency would be designated which would conduct an annual review of all monitoring reports and which would consolidate the findings in an annual report which would be accessible and understandable to the public, and (2) in order to assist in the process of assessment, the Grand Jury expressed the desire that one of the monitoring agencies at least experiment with a more sensitive instrument and assessment process such as, specifically, the Medicus QES instrument.

We have already indicated that neither of these steps have taken place and we reiterate the need for their implementation as an essential prerequisite to a consumer understanding of quality of care in individual nursing homes.

We find the present statutory nursing homes rating system totally inadequate. The system assigns an "A" rating to homes that correct the deficiencies found in the single annual Licensure and Certification inspection, irrespective of all other defects and deficiencies which may arise at other points in time during the year and irrespective of overall quality of life in the nursing home. All Dade's nursing homes, it should be pointed out, have received "A" ratings in that all have corrected the annual listed deficiencies even though some have received temporary "C" ratings, meaning deficiencies remain uncorrected, until such time as the corrections have been made.

An "A" rating is misleading to the public in that the public will interpret it as indicating superiority when in fact it indicates the meeting of bare minimum standards as measured by a process which is in itself of questionable value, this being the Licensure and Certification annual inspection.

The 1979 Grand Jury Report, based upon the materials in the 1976 through 1977 inspection Reports grouped the Homes in four categories, these being (1) Homes Consistently Providing Very Good Care, (2) Homes Generally Providing Good Quality of Care, (3) Homes not Generally Providing Good Quality of Care, and (4) Homes Consistently Providing Very Poor Quality of Care.

In attempting to group the Homes in these four categories based upon the 1979-1980 inspections we find that the inspection reports do not provide sufficient information, or provide only superficial information, and that they do not permit the type of classification undertaken last year. We find that this is due to (1) the phasing out of the HRS Medical Team, which prepared very helpful annual quality of care assessments of each home, and its replacement by PSRO, which prepares no such assessments, and (2) the consequent necessity of reliance upon the Licensure and Certification instrument, which was described by the 1979 Grand Jury Report as "it is an objective instrument and does not call for interviews of patients or staff nor qualitative assessments of service, as opposed to the mere existence and documentation of categories of service. Nor does this instrument attempt to measure the sensitivity of staff and of surroundings."

The quality of nursing homes often varies greatly within quite short spans of time. Administrative changes and absentee ownership often combine to effect dramatic changes in the levels of quality of care, as is illustrated by the 1979-80 history of North Shore Nursing Home which was without Administrator, Director of Nursing and Medical Director at one point, with the Home being run by the bookkeeper, with senile patients wandering in and out of the facility and the Home advising Licensure and Certification at one point that it had actually lost a patient. Yet prior to the chaos of 1979-80, North Shore had provided an adequate level of care and the Home is reported to be making significant progress at the present time.

The rapid cycles in levels of quality of care in many nursing homes clearly demonstrates the inadequacy of the one annual Licensure and Certification inspection process conducted at the same time each year. These fluctuations also make it impossible for this Grand Jury to rank the Homes as we did last year. And this is unfortunate, if only because it becomes equally impossible for the consumer public to be provided with timely and accurate information regarding the quality of life in individual nursing homes.

We have already acknowledged the commendable steps taken by HRS as well as our hope and our anticipation that the Pilot Project will provide dramatic evidence that, given inter-agency cooperation coupled with innovative leadership and vigorous enforcement, quality of care in nursing homes can be monitored as well as improved.

We have received indications that the much more aggressive leadership being provided Licensure and Certification, leadership emanating from the Secretary and Deputy Secretary of HRS over the past several months, is already having a positive impact upon the Homes. While the quality of care in some homes appears to have deteriorated during 1979-80 (Fountainhead, Arch Creek, New Riviera and North Shore, for example), the quality in others has improved (Fairhaven Center, Hialeah, Four Freedoms, and even Greynolds), and there is evidence that the overall quality of care in Dade's nursing homes is being upgraded.

Yet it will be at least another year before we will be able to confirm that this trend has finally rendered obsolete and inapplicable the findings of the 1979 Grand Jury regarding nursing home quality of care that were presented at the beginning of this Section.

And we reiterate at this point the last three Recommendations made in the Report of the Spring 1979 Grand Jury:

(6) Eighty percent of all direct care dispensed in nursing homes is dispensed by aides who are paid the legal minimum wage and who are, not unexpectedly, poorly trained and poorly motivated. The current annual turnover rate of nursing aide staff is 75%. The in-service training required of nursing home staffs must be raised and incentives must be provided for local colleges to provide nursing aide training and for staff members to be enrolled in such training.

(7) We as a Grand Jury have become sensitive to the need for a continuum of integrated health care services ranging from acute hospital care to nursing homes to congregate living facilities for those not in need of placement in nursing homes. Unless this continuum is an effective one, we can expect to find patients in nursing homes who might function in less restrictive settings, assuming their existence ...

(8) Above we have recommended the implementation of a vigorous inspection process and the need for a more sensitive evaluation method. We as a Grand Jury can go no further. At the outset of this Report we indicated that we hoped the Report would represent not the end of an investigation but rather the beginning of a community's awareness. Only a community sensitive to the plight of the elderly nursing home resident will assure that these recommendations become translated into a more caring and cheerful existence for the elderly in long term care facilities.

We have heard no concrete evidence that these last three Recommendations, which are clearly of a longer term nature, have been meaningfully acted upon.

We hope, however, that the community awareness alluded to in the final recommendation has been awakened over the past year and that the Grand Jury Report which we have attempted to update has played a role in the process.

IV. CONCLUSION

We are pleased to observe that the legacy of the Final Report of the Spring Term 1979 Grand Jury is one of which that Jury should be proud. We have noted the response of the Department of Health and Rehabilitative Services. We also commend the State Legislature for having enacted 1980 legislation broadening

the range of measures available for use against substandard nursing homes, such as appointments of receiverships to operate homes which consistently fail to comply with regulations. This same legislation also broadens the coverage of the Patients' Bill of Rights and provides for civil enforcement of patients' rights.

Yet, as we have also indicated in this Report, much remains to be done and we are at best still at the threshold of implementation of the many suggestions and recommendations contained in the 1979 Report, many of which are as yet unaddressed. The next year, we feel, will be a critical one. During the coming year we will learn if this Region XI Pilot experiment will succeed, as we earnestly hope it will. And during the year we will also learn if the 1979 Recommendations not as yet acted upon will be addressed. And, perhaps most importantly, we will learn whether our public officials, and our community, will sustain the interest and the inclination to monitor progress in improving the lot of the five thousand nursing home residents in Dade County. Once again we urge the local health care community to institutionalize a forum for an annual assessment process for this evaluation of conditions in nursing homes and, once again, we ask that the Spring Term 1981 Grand Jury monitor this recommendation. And, finally, we reiterate the closing paragraph of the 1979 Grand Jury Report:

We acknowledge that it is not a pleasant experience to visit a mediocre nursing home. Nor is it pleasant to contemplate the conditions described in this Report. We leave to the conscience of this community the question of whether, howsoever unpleasant, the issues we raise represent our collective responsibility.

FAIRNESS IN SENTENCING STUDY

I. INTRODUCTION: THE NEED FOR A FAIRNESS IN CRIMINAL JUSTICE STUDY

Our community's continuing concern regarding the effectiveness, or lack of it, of our criminal justice system was traced in the Final Report of the Fall Term 1979 Grand Jury which noted that twenty-three previous Grand Juries had addressed various aspects and components of the Justice System in Final Reports issued over the past two decades.

That Final Report, coincidentally, was published less than two weeks prior to the civil disturbance of last May. And that disturbance, triggered by an event which many regard as a tragic symbol of that which is wrong with our system of justice, focused attention upon the need to ask new questions of its institutions. Whereas past Grand Juries have asked whether those institutions and functions were being performed efficiently and effectively for the entire community, the events of May specifically posed the question of whether the system, efficiency and effectiveness aside, is fair and even-handed. And that question, put in its most fundamental form, asks simply whether all persons, irrespective of racial or ethnic background, are treated equally at the various decision-making points in the criminal justice system. These decision making points include the decision to arrest, made by the police, the decision of whether and what to charge, made by the prosecutor, and the decision of how to sentence, with this last decision being that of the Court, albeit with input from prosecutor and police.

To fully assess whether our criminal justice system is fair and unbiased would require an exhaustive analysis of all of the components of the system and if we have learned nothing more during our term, it has been that the system is

one of great complexities and countless subtleties. In the Report which follows we attempt to address only one aspect of the assessment of fairness in criminal justice, that aspect being the question of fairness in sentencing. As we shall see, our own limited study leaves many questions as yet unanswered.

Our Report represents only a starting point. We will recommend that the next Grand Jury carry forward the assessment of fairness in sentencing and that it also begin to address questions of fairness at the other critical decision points.

All citizens of Dade County, irrespective of race or ethnicity, have the right to ask of their criminal justice system evidence that its workings are equitable and unbiased, as well as the right to be presented with any indications to the contrary. In the Report which follows, we begin the search for such evidence and indications.

II. THE GRAND JURY STUDY: FAIRNESS IN SENTENCING

A. The Case Disposition and Sentencing Process

Of the several decision making points from arrest to case disposition, the sentencing decision is, obviously, the last. Each decision making point involves the exercise of discretion by a functionary in one of the agencies which collectively make up our system of justice, and at each of these points, because individual discretion is involved, the possibility of a biased decision exists. In a situation involving possible criminality, a police officer possesses an enormous amount of discretion as to whether to arrest. Once the arrest is made it becomes the prosecutor's function to determine what charges, if any, will be filed and brought to Court. As was noted in the Introduction, these decision points are not the focus of our Report, although we think it essential that they be studied. Our focus is fairness in case dispositions, which of course includes the judicial sentencing process.

The Judge is, clearly, central to the case disposition process, but dispositional and sentencing practices also include prosecutor and defense attorney. A sentence is often a decision reached as a result of a negotiation process involving the acquiescence of one or both of these lawyers. One implication of this is that, in the event biased decisions were found in the sentencing or dispositional process, the question would still remain as to whether the bias were attributable to the Courts or to the prosecutor and defense as part of their negotiation practices preceding guilty pleas, or to the courts and the attorneys collectively.

At the outset it should be made clear that case disposition and sentencing are not synonymous and that a sentence, usually to probation or to jail, represents only one type of case disposition. The various types of criminal case dispositions include the following:

No Action or Nolle Prose: Once an arrest is made it becomes the function of the Prosecutor to decide whether sufficient legally admissible evidence exists to justify a filing of charges. In the event such legally admissible evidence does not exist, the prosecutor will announce a No Action prior to the filing of charges. Once charges have been filed, should evidence become unavailable, usually due to the unavailability of witnesses, the prosecution will generally concede the impossibility of proceeding by disposing of the case by a Nolle Prose. In both instances the result is a dropping of the charges for which the accused was taken into custody.

Dismissals and Acquittals: While the prosecutor's discretion includes the authority to No Action or Nolle Prose, the Court may terminate a prosecution by dismissing a case by ruling that the evidence against the accused is legally insufficient. The Court may also rule evidence inadmissible by granting a defense motion to suppress, or exclude, evidence. And, of

course, a defendant may proceed to trial and be found not guilty, or acquitted.

Pretrial Intervention: An additional dispositional alternative to sentencing is in the form of a rehabilitative diversion program for non-violent first offenders which offers counseling, drug rehabilitation, and vocational and educational referrals as an alternative to prosecution. Initiated by the State Attorney's Office in 1972, the Program was absorbed by Dade County in 1974 and in 1980 became a component of the State Department of Corrections.

Probation and Jail: Finally, those cases not disposed of in the manners enumerated above proceed to sentencing by the assigned Judge. With very minor exceptions, such as fines, felony cases are sentenced to either probation or jail for varying lengths of time.

B. The Grand Jury Study

In order to attempt to analyze felony case dispositions for possible bias in overall dispositions with particular emphasis upon sentencing, our method involved the selection of 1400 felony arrests which occurred in the time period January through March, 1979. The 1400 cases selected for study excluded cases reduced to misdemeanors as well as defendants charged with more than one offense and those also charged with probation violations. The data extracted from the files included type of charge, type of disposition, nature of defendant's prior criminal record, age, address, race and ethnicity of defendant, race and ethnicity of victim, as well as the Judges to whose Courts the cases were assigned.

We then, with the very able assistance and guidance of Dr. Howard Gitlow of the University of Miami's School of Business Administration and utilizing the computer resources of the University of Miami, examined our data in the various ways described in the following Sections, which deal respectively with the

characteristics of offenders and victims and, then, with data relating to the question of fairness.

III. STUDY FINDINGS: A SUMMARY

The data presented in this Report will provide indications that the criminal justice system is biased and unfair and yet at the same time provide other indications that it is unbiased and fair. Our interpretation of the data is that it clearly indicates the need for further study by subsequent Grand Juries. Further, we feel it would not be responsible for this Report to be interpreted as an indication on our part that we have either vindicated the system or that we have condemned it.

Our study has done the following:

(1) In Section IV we present data relating to the characteristics of offenders and victims.

(2) In Section V we preliminarily examine the question of Fairness: while this data suggests that Blacks are treated more harshly than Whites, this data has not been refined to include information regarding types of offense and prior criminal records.

(3) In Section VI we add the necessary data regarding prior record and types of charge: while this data suggests that the system does not discriminate between Blacks and Whites, we again caution against this interpretation of our study until additional research is conducted.

IV. STUDY FINDINGS: CHARACTERISTICS OF OFFENDERS AND VICTIMS

A. Types of Crimes

The charges for which the defendants in the study were arrested were as follows:

<u>Charge</u>	<u>Number</u>	<u>Percentage</u>
Aggravated Battery/Aggravated Assault	259	19%
Carrying Concealed Firearm	110	8%
Second Degree Theft	257	19%
Possession and/or Sale of Marijuana	116	9%
Possession and/or Sale of Cocaine	119	9%
Possession and/or Sale of Quaaludes	63	5%
Possession and/or Sale of Heroin	22	2%
Burglary Dwelling	108	8%
Burglary of Structure or Conveyance	138	10%
Robbery	82	6%
Rape/Murder/Manslaughter	34	3%
Forgery/Fraudulent Use Credit Card	32	2%
	1340*	100%

B. Types of Dispositions

The dispositions for the offense listed above were as follows:

<u>Disposition</u>	<u>Number</u>	<u>Percentage</u>
No Action/Nolle Prosse	668	48%
Dismissed or Acquitted	76	6%
Pretrial Intervention	141	10%
Probation under 3 years	246	18%
Probation over 3 years	70	5%
Jail under one year	64	5%
Jail 1 to 5 years	76	6%
Jail over 5 years	35	3%
	1376*	100%

The extremely large number of no action/nolle prosse dispositions represented a finding with significant consequences for our study. The fact that virtually one half of all cases selected for study were disposed of in this way resulted in a greatly diminished number of cases actually proceeding to a sentencing decision, 491 cases, or only 35% of all cases. The reasons for the no action/nolle prosse dispositions were as follows:

<u>Reason For No Action/ Nolle Prosse</u>	<u>Total</u>	<u>Black</u>	<u>White</u>
Witness Unavailability	35%	39%	33%
Victim will not Prosecute	15%	16%	14%
No Probable Cause For Search	9%	4%	13%
Motion to Suppress Granted	3%	1%	5%
Insufficient Evidence	31%	34%	29%
Restitution Made	1%	-	-
Other	5%	5%	5%
Expiration of Speedy Trial	1%	1%	1%
	100%	100%	100%

*The total numbers of cases in each table will vary due to the fact that only those cases with relevant available data are counted.

C. Prior Arrest and Felony Record

The prior records of the defendants in the sample, excluding those whose records are not known from the files, are as follows:

<u>Criminal History</u>	<u>Number</u>	<u>Percentage</u>
First Offender	477	46%
Prior arrests/no felony conviction	334	32%
One or two felony convictions	158	15%
Three or more felony convictions	<u>70</u>	<u>7%</u>
	1039	100%

D. Race and Sex of Defendants and Victims

For the purposes of this analysis, defendants and victims are grouped as to race (Black or White), and not as to ethnic background (Latin or Non-Latin).

The race and sex of the defendants were as follows:

<u>Race-Sex of Defendant</u>	<u>Number</u>	<u>Percentage</u>
White Male	685	49%
White Female	86	6%
Black Male	530	38%
Black Female	<u>93</u>	<u>7%</u>
	1394	100%

Thus, our study indicates that 87% of defendants were male and 13% female, and that 57% of defendants were White and 45% were Black.

The race and sex of victims follows. Note that many crimes involve no victims (sale or possession of narcotics or carrying a concealed firearm, for example) or involve victims who are not persons (fraudulent use of a credit card or shoplifting, for example, in which the victims are businesses or corporations):

<u>Race-Sex of Victim</u>	<u>Number</u>	<u>Percentage</u>
No Victim	483	35%
Victim not a Person	261	19%
Male-White	73	5%
Female-White	43	3%
Male-Black	54	4%
Female-Black	39	3%
Female Race Unknown	123	9%
Male Race Unknown	<u>308</u>	<u>22%</u>
	1384	100%

In 210 cases the race of both defendant and victim are known, with the victim a person. It is of interest that in 82% of these cases both the defendant and the victim are of the same race. The breakdown is as follows:

<u>Race of Defendant/Race of Victim</u>	<u>Number</u>	<u>Percentage</u>
White-White	89	42%
Black-Black	83	40%
Black-White	28	13%
White-Black	10	5%
	<u>210</u>	<u>100%</u>

E. Age, Occupation and Residence of Defendants

Our study completely substantiates the findings of the Fall Term 1979 Grand Jury, which documented the relationship of crime to youth and poverty.

In our sample, nearly 3 out of 4 (67%) defendants were aged eighteen to thirty and 3 out of 4 (76%) were either unemployed or employed in unskilled or minimal skill occupations.

Our study grouped defendants by home address zip code with the following addresses representing those with the most defendants residing within them:

<u>Zip Code</u>	<u>Number of Defendants</u>	<u>%</u>	<u>Address</u>
33147	132	12%	N.W. 62 St. to N.W. 107 St. N.W. 12 Ave. to 38 Ave.
33142	106	9%	N.W. 20 St. to 62 St. N.W. 12 Ave. to 42 Ave.
33169	42	4%	N.W. 151 St. to 215 St. No Miami Ave. to N.W. 17 Ave.
33150	41	4%	N.W. 62 St. to 107 St. No Miami Ave. to N.W. 12 Ave.
33136	41	4%	N.W. 5 St. to 20 St. No Miami Ave. to N.W. 12 Ave.
33127	65	6%	N.W. 20 St. to 62 St. No Miami Ave. to N.W. 12 Ave.
33054	37	3%	N.W. 120 St. to 167 St. N.W. 17 Ave. to 57 Ave.

With 18% of defendants emanating from addresses outside of Dade County, 41% of all defendants arrested in our sample reside

within seven of Dade County's 78 zip code address groupings. And 21% of those arrested resided in two zip codes (33147 and 33142) representing only 5% of Dade residences. Seven percent of all Dade County residents reside in these seven zip codes.

V. STUDY FINDINGS: OVERALL RESULTS

As was indicated above, the overall case dispositions of the cases studied were as follows:

Case Dismissed or Nolle Prossed	705	(53%)
Pretrial Intervention	133	(10%)
Probation	305	(24%)
Jail	173	(13%)
	1316	100%

Separated as to Blacks and Whites, the dispositions were as follows:

	<u>Black</u>	<u>White</u>
Case Dismissed or Nolle Prossed	347 (57%)	358 (50%)
Pretrial Intervention	27 (5%)	106 (15%)
Probation	121 (20%)	184 (26%)
Jail	107 (18%)	66 (9%)
	602 100%	714 100%

The overall data, not yet taking into account previous criminal records or types of charges, suggests that Blacks are twice as likely to receive jail sentences as are Whites, and that Whites are three times as likely to be diverted to the Pretrial Intervention Program as are Blacks. Yet, as we will see in the next Section, this does not permit a conclusion that the system discriminates against Blacks since neither types of charges or extent of prior criminal record is taken into account.

Additional data is provided by isolating only the cases in which defendants were actually sentenced, to jail or probation, eliminating the other dispositions:

	<u>Total</u>	<u>Black</u>	<u>White</u>
Probation	64%	53%	74%
Jail	36%	47%	26%
	100%	100%	100%

Overall, and again without taking into account previous criminal records and types of charges, Blacks are significantly more likely to receive jail sentences and significantly less likely to receive probation, than are Whites.

VI. STUDY FINDINGS: RESULTS BY PRIOR RECORD AND TYPE OF CHARGE

As has been seen, the overall results of our sample clearly suggest that Blacks are treated more harshly than Whites in the dispositional process. Yet the data which follows will suggest that Blacks tend to have more serious prior records, and tend to be charged with more serious offenses, than do Whites. The question which must then be asked is whether these factors sufficiently offset the overall dispositions so as to bring into balance the sentencing differences between Black and White defendants. Within that very difficult question lies much of the answer as to whether the system is or is not biased.

For this phase of the study, defendants were grouped in three categories as to prior criminal histories, the groups being (1) No prior arrests, (2) Some criminal history, defined as arrests but no felony convictions, and (3) Substantial criminal history, defined as arrests and at least one felony conviction.

The following tables present the number of Blacks and Whites arrested for the various types of crimes studied broken down by type of criminal history:

(1) No Prior Arrests

In this group were 144 Blacks (33%) and 290 Whites (67%). Their charges were:

<u>Charge</u>	<u>Black</u>	<u>White</u>	<u>Total</u>
Agg. Ass./Agg. Batt.	44 (31%)	36 (12%)	80 (18%)
CCF	16 (11%)	36 (12%)	52 (12%)
Grand Theft	24 (17%)	59 (20%)	83 (19%)
Poss./Sale Marijuana	15 (10%)	39 (13%)	54 (12%)
Poss./Sale Cocaine or Quaaludes	7 (5%)	63 (21%)	70 (16%)
Burglary	20 (14%)	50 (17%)	70 (16%)
Robbery	18 (12%)	7 (2%)	25 (6%)
	144	290	434

(2) Some Criminal History

In this group were 143 Blacks (49%) and 146 Whites (51%).

Their charges were:

<u>Charge</u>	<u>Black</u>	<u>White</u>	<u>Total</u>
Agg. Ass./Agg. Batt.	32 (22%)	22 (15%)	54 (19%)
CCF	12 (8%)	15 (10%)	27 (9%)
Grand Theft	32 (22%)	25 (17%)	57 (20%)
Poss./Sale Marijuana	7 (5%)	8 (5%)	15 (5%)
Poss./Sale Cocaine or Quaaludes	7 (5%)	34 (23%)	41 (14%)
Burglary	36 (25%)	39 (27%)	75 (26%)
Robbery	17 (12%)	3 (2%)	20 (7%)
	143	146	289

(3) Substantial Criminal History

In this group were 120 Blacks (64%) and 68 Whites (36%).

Their charges were:

<u>Charge</u>	<u>Black</u>	<u>White</u>	<u>Total</u>
Agg. Ass./Agg. Batt.	31 (26%)	11 (16%)	42 (22%)
CCF	3 (3%)	3 (4%)	6 (3%)
Grand Theft	28 (23%)	19 (28%)	47 (25%)
Poss./Sale Marijuana	2 (2%)	4 (6%)	6 (3%)
Poss./Sale Cocaine or Quaaludes	14 (12%)	10 (15%)	24 (13%)
Burglary	33 (28%)	19 (28%)	52 (28%)
Robbery	9 (8%)	2 (3%)	11 (6%)
	120	68	188

It is clear from the above tables that there are substantial differences between the Black and White defendants as to (1) nature of prior records and (2) types of charges. Before one can attempt any conclusions regarding fairness in sentencing, it is obvious that these two variables must be taken into account, or controlled for.

(1) Nature of Prior Records

Blacks in the sample of arrested defendants tended less to be first offenders and more to have serious criminal histories:

	<u>Black</u>	<u>White</u>	<u>Total</u>
First Offenders	144 (35%)	290 (58%)	434 (48%)
Some History	143 (35%)	146 (29%)	289 (32%)
Substantial History	120 (30%)	68 (13%)	188 (20%)
	407 100%	504 100%	911 100%

(2) Types of Charges

Blacks in the sample tended to be arrested more than Whites for Aggravated Assaults and Batteries and Robberies (34% of Blacks, 17% of Whites) while Whites tended to be arrested more frequently than Blacks for Possession of Controlled Substances other than marijuana (21% of Whites as compared to 5% of Blacks).

It would thus appear that Blacks (1) tend to come into the system with more substantial criminal histories and (2) tend to be arrested for more serious offenses. These factors will reduce the disparities in overall sentencing which are presented at the outset of this Report.

In order to attempt to control for these two variables, the following three tables present the dispositions, by type of prior record, of those four categories of offenses for which Whites and Blacks tend to get arrested in relatively equal percentages, these offenses being CCF, Grand Theft, Possession and/or Sale of Marijuana and Burglary:

(1) First Offenders

In this group were 75 Blacks (29%) and 187 Whites (71%). The dispositions were:

	<u>Black</u>	<u>White</u>	<u>Total</u>
Case Dismissed/NP	28 (37%)	64 (34%)	92 (35%)
Pretrial Intervention	15 (20%)	53 (28%)	68 (26%)
Probation	27 (36%)	66 (35%)	93 (35%)
Jail	<u>5 (7%)</u>	<u>4 (2%)</u>	<u>9 (3%)</u>
	75	187	262
Probation as % of sentences	84%	94%	91%
Jail as % of sentences	16%	6%	9%

(2) Some Criminal History

In this group were 86 Blacks (50%) and 87 Whites (50%). The dispositions were:

	<u>Black</u>	<u>White</u>	<u>Total</u>
Case Dismissed/NP	39 (45%)	33 (38%)	72 (42%)
Pretrial Intervention	4 (5%)	6 (7%)	10 (6%)
Probation	33 (38%)	32 (37%)	65 (38%)
Jail	<u>10 (12%)</u>	<u>16 (18%)</u>	<u>26 (15%)</u>
	86	87	173

Probation as % of sentences	77%	67%	71%
Jail as % of sentences	23%	33%	29%

(3) Substantial Criminal History

In this group were 70 Blacks (61%) and 45 Whites (39%).

The dispositions were:

	<u>Black</u>	<u>White</u>	<u>Total</u>
Case Dismissed/NP	25 (36%)	17 (38%)	42 (37%)
Pretrial Intervention	0	3 (7%)	3 (3%)
Probation	11 (16%)	11 (24%)	22 (19%)
Jail	<u>34 (49%)</u>	<u>14 (31%)</u>	<u>48 (42%)</u>
	70	45	115
Probation as % of sentences	24%	44%	31%
Jail as % of sentences	76%	56%	69%

(4) Composite

The dispositions for the total group were:

Case Dismissed /NP	92 (40%)	114 (36%)	206 (37%)
Pretrial Intervention	19 (8%)	62 (19%)	81 (15%)
Probation	71 (31%)	109 (34%)	180 (33%)
Jail	<u>49 (21%)</u>	<u>34 (11%)</u>	<u>83 (15%)</u>
	231	319	550
Probation as % of sentences	59%	76%	68%
Jail as % of sentences	41%	24%	32%

D. The Question of Ethnicity

As was mentioned at the outset, defendants were grouped as to race and not ethnicity. The effect of this is that Latins were grouped as to their race rather than ethnicity. So as to answer the question of whether the separation of Latins by ethnicity from Black-non Latins and White-non Latins would alter the results, our study took this additional step. We found that a breakdown of the data by ethnic groups, instead of by racial groups, had no effect upon the data and findings relating to the issue of disparity of treatment of Blacks as opposed to Whites.

VII. CONCLUSIONS: THE POSSIBILITY OF DISCRIMINATION

We have seen that Black defendants are, overall, twice as likely to be sentenced to jail as Whites, and that Whites are three times as likely to be diverted to the Pretrial Intervention Program. Yet we have also seen that White defendants are twice as likely to be first offenders and only half as likely to have substantial criminal histories as are Black defendants. And we have also seen that Blacks tend to be arrested in greater numbers than Whites for crimes against persons, while Whites are more likely to be arrested for victimless narcotic offenses. These findings would suggest that, overall, Dade County's criminal justice system exhibits no clearly defineable bias against Blacks. Yet, again, we emphasize that our data suggests conflicting conclusions and the data does not permit a conclusion that the system is unbiased.

Yet we feel the need to qualify this overall observation by pointing to those items in our study which do suggest, albeit subtly, the possibility of racial discrimination.

First, only 20% of Black first offenders charged with carrying a concealed firearm, grand theft, possession and/or sale of marijuana or burglary were identified and diverted to the Pretrial Intervention Program, as compared to 28% of White first offenders. We have learned that during the study period in early 1979 that this Program relied upon referrals from prosecutors and defense attorneys and that it did not screen all cases for eligibility.

Prosecutors and defense attorneys thus evidently were less diligent in identifying Black eligible first offenders than White first offenders. The result is that Black first offenders, instead of being given the opportunity at a clean record provided by Pretrial Intervention, were placed on probation with a criminal record, and, consequently, enhance the disparity in the percentages of Whites and Blacks with no criminal history.

And a second item suggesting a possibility of bias is to be found in the data which indicates that Blacks were significantly more likely to receive jail sentences and less likely to receive probation in the categories of first offenders and offenders with substantial criminal histories. Yet this pattern of dispositions is not evident in the comparison of the second group of offenders, those defendants with some criminal history, where we see a reverse pattern of White defendants being more likely to receive jail sentences and less likely to receive probation.

As we indicated at the outset, the complexities and subtleties which are so prevalent in the criminal justice system render it extremely difficult to respond with finality to the question of whether bias or discrimination are present or identifiable in the dispositional process.

We conclude that additional research will be needed in order for conclusive answers to be reached. This additional research will require an enlargement of the number of cases studied and we urge that the incoming Fall Term 1980 Grand Jury authorize the continuation of the Fairness in Criminal Justice study that we have commenced. And, in addition, we urge that the Fall Term Grand Jury also begin to examine those other components of the study of Fairness in Criminal Justice mentioned in the Introduction to this Report. We suggest further that the creation of an interdisciplinary team, including experts with backgrounds in Criminal Justice, Sociology, Social Work, and Statistics should be encouraged by the Grand Jury as a means of continuing this study.

THE DADE COUNTY SCHOOL SYSTEM

The Grand Jury which preceded us included in their Final Report a section dealing with the Dade County School System.

The opening paragraph of that Report read as follows:

During our Term we have seen our school system receive unprecedented public attention. While much of this concern has centered around criminal charges brought against the Superintendent of Schools and his subsequent suspension, other questions have been raised as well regarding the effectiveness of various components and levels of the school system and the way in which they inter related. We have deemed it our responsibility to address these concerns and issues, albeit only preliminarily, and to set forth areas in which questions of effectiveness appear, to us, to exist. Time constraints permit us only to set forth problems we have identified along with some observations. It will become the task of the School Board and, hopefully, subsequent Grand Juries, to ensure that these problems are not only addressed, but that effective solutions are found.

During our Term we followed the suggestion of that Grand Jury and we received reports and testimony dealing with the status of the various recommendations made in that Report. In so doing, we were fortunate to have received the capable assistance of Dr. Robert Simpson of the University of Miami School of Education and Allied Professions.

We are pleased to report that substantial progress has been made by the School Board and by the Superintendent of Schools in addressing the problem areas identified in the previous Grand Jury's Report. Specifically, the four problem areas and our findings with respect to the respective areas are as follows:

(1) The previous Grand Jury found:

Events and circumstances which culminated in the suspension of the Superintendent lead us to conclude that the Board was neither sufficiently informed nor sufficiently assertive in managing the business of the school system and in demanding accountability on the part of the Superintendent. Adequate checks and balances must exist at three levels in a school system: namely, (1) the Board, (2) the Superintendent and his staff and (3) the school-based managers who are the principals and assistant principals.

We are convinced that adequate checks and balances do not presently exist among the three levels. As an example, we find that the School Board has delegated an excessive amount of its authority for the allocation, expenditure and monitoring of funds, and has permitted the Superintendent's office to establish rules which should have been established by the Board, or, at least, been approved by the Board.

We find that the School Board has become more assertive in its governance and stewardship functions. The presence of a certified public accountant on the Board has helped. Over the past several months Board members have become significantly more inquisitive and demanding in the process of receiving information from School administrators.

The previous Grand Jury found "an increasing and unnecessary concentration of power in the Superintendent's office, and a corresponding diminution of the power and authority of the Board." We specifically find this to no longer be the case and we commend the new Superintendent's obvious willingness to correct the imbalance which had developed during the tenure of his predecessor.

We further find that the upper echelon school administrators have been reverted to standard contracts, no longer containing clauses that specify that their services may automatically terminate in the event of the dismissal of the Superintendent. And we also note that the number of administrators reporting directly to the Superintendent has been reduced from ten to seven.

A major point made in the Report involved the need to create direct lines of communication to the Board for the internal audit and ombudsman functions. A position of Associate Superintendent for the Bureau of Administration was established in the recent reorganization and the effect of this is that personnel and ombudsman functions apparently have direct access to the Board. Yet we also find that program and financial audits are housed elsewhere and have no such access as yet.

(2) A second area of concern to the last Grand Jury related to finance and purchasing. The Report found that:

We find that currently there are no adequate internal controls upon what items can be purchased with discretionary funds at the school and district levels despite the existence of written procedural safeguards. Furthermore, the Superintendent's discretionary requisition power (also known as Superintendent's Authorized Requisitions or "SARs"), intended to expedite purchases in emergency situations, lacks effective controls . . .

We find that while the need to monitor discretionary funds will continue, as will the need to monitor vendors and property management, there has been a tightening of procedures and internal audit controls relating to discretionary account activities as well as purchases and emergency financial transactions. Indicative of this tightening has been the addition of five positions to the auditing staff.

(3) The third area of concern related to educational programs generally as well as to, specifically, special programs funded by federal or private funds. The Report indicated that:

We note that the office for measurement and evaluation of instructional programs reportedly has been reduced in staff during the past three years, now limited to only five professionals, one less than a similar office which evaluates only federal Title I programs. The former office, unfortunately, is placed low in the decision-making hierarchy and has been reported to be the second smallest among large city school districts in the nation. Their reports would have to clear three administrative levels before reaching the Board.

We recommend that the instructional measurement and evaluation function should be upgraded and expanded in scope, as well as permitted to make public reports. This function should be tied to the internal audit and ombudsman functions. Subject area consultants at the district level should be given more authority and responsibility to coordinate not only regular educational programs, but also special federal programs in their area of expertise. More coordination is needed between special and regular programs. Also, some type of pilot activity with a clear evaluation component should be required before any program is institutionalized and the Board should be fully informed of pilot test results ...

and as to special programs:

We find a vital need for increased linkage between special programs such as Title I, the standard curriculum and such supporting areas as personnel, supervision, evaluation and finance.

Special instructional materials must be carefully selected, used on a pilot basis with an open evaluation process built in, and such programs must be accounted for strictly.

A special, clear, budget with monthly status reports should be established for each program. Quarterly and annual reports should include independent evaluation and impact statements for such programs. Again, independent internal controls with occasional outside reviews are as essential here as with the regular school program. Title I and similar projects should not be run as separate entities, except as required by law, and must follow standard educational and financial accounting systems. The result will increase accountability to the Board and to the public.

We find that the evaluation activities for federal and regular educational programs are no longer separated organizationally, a positive step. Yet we must also note that operationally little appears to have changed in that one evaluator may still be assigned to only federal projects and we have learned that a need still exists to review how programs are selected for evaluation, how the evaluations are done as well as how staff is selected for the reviews.

Also, we find that special programs need to be reviewed so as to determine how participant eligibility is determined, how staff and materials are selected and how services are allocated to particular schools. Management of special programs represented a critical weakness identified by the Grand Jury Report and, while progress has been made, we feel that there is more yet remaining to be done.

(4) The final area identified by the Grand Jury related to administrative personnel, with the recommendation being made that the administrative selection process be made more objective and clear and the implication made that the former Superintendent had controlled and perhaps even manipulated the process. We also find progress here in that the current administrative selection is said to now be housed within the in-service training program rather than under the standard personnel administrators, yet we urge that this area continue to be monitored.

In conclusion, we are gratified to find that the findings and recommendations of the last Grand Jury have been responsibly received and acted upon by the Board and the Superintendent. We particularly commend Dr. Leonard Britton, whose testimony before us indicates clearly his concern, his professionalism and his grasp of the issues confronting him. Dr. Britton has taken clear positive steps in a short period of time, and during a most difficult period of time. It has been, we note, a period of time during which our school system has absorbed over 13,000 refugee children in a matter of months, this number of students in itself being in excess of the number of students in ninety percent of the school system in the nation.

We add, however, that the need will continue for a monitoring of the system and, while we are confident that movement is clearly in the right direction, we ask that the School Board consider the implementation for a one year period of a monitoring project such as was created by the last Grand Jury to assist that body in the preparation of their Report. Also, we recommend that the next Grand Jury continue to receive periodic briefings on the status of the school system and, specifically, the various areas of concern identified by the last Grand Jury.

COMMENTS AND CONCLUSION

I

The Scott-Carver public housing project, a dense and decaying community of eight hundred and fifty families occupying an area of forty-two square blocks in Liberty City became, both literally and figuratively, a focal point in the tragic events of last May.

During the late summer we had occasion to receive testimony from residents of Scott-Carver who described aspects of life in this desolate corner of our community. We have heard how truancy, broken families, drug abuse, idleness, unemployment and ultimately violence and crime characterize growing up in Scott-Carver. And we have also heard that those social agencies responsible for mental health, education and vocational training, rehabilitation and recreation and adequate housing have failed dismally in their attempts to make an impact upon these problems.

We have learned that the May disturbance has resulted in massive amounts of federal funds being earmarked for Scott-Carver and, more generally, for Dade's ghetto areas. We are concerned with the future of Scott-Carver and we are concerned with the possibility that the millions of federal dollars spent attempting to address these social problems during the past fifteen years have failed to do so and may have left only a legacy of hopelessness which exploded in May.

We urge the Fall Term 1980 Grand Jury to monitor the allocation and expenditure of the eighty-one million dollars in federal funds which are to be received by Dade County and we urge a close scrutiny to assure that the monies actually have an impact upon the residents of Scott-Carver, and similar communities, and their problems. We have heard that the Scott-

Carver of 1980 closely resembles the Scott-Carver of 1970, the federal funds expended in the intervening years notwithstanding. We wish to avoid the possibility of that same observation being made in 1990.

II

Late in our Term we were made aware of the enactment, effective October 1, 1980, of a new law which narrows the discretion of Juvenile Court Judges to detain alleged delinquents after their arrest.

The law provides that a juvenile cannot be detained unless charged with a capital crime or first degree felony, a crime of violence or who has been convicted of two separate serious property crimes in the past. An illustration of the law's ill-advisedness was provided when a seventeen year old charged with a six thousand dollar diamond theft who had no family or community ties in Dade County was refused by Youth Hall as not meeting the law's criteria. Consequently the arresting detective was forced to free the offender in the parking lot of Youth Hall. If the youth later fails to appear in court and is arrested on a warrant, the Judge would likewise be required to free the offender again after forty-eight hours.

We find that the shortcomings in this law should be addressed immediately and we urge that the Florida Legislature act during its upcoming special session to amend the law so as merely to set guidelines for judges to follow instead of rigidly defining specific and inflexible definitions which unwisely remove all discretion from judges and juvenile detention personnel.

We have reviewed the text of a revised law prepared by the State Attorney's Office which appears to remedy the defects that we have found and we understand that this new law will be submitted to the Legislature and we urge its adoption.

III

We are aware of the dramatic increase in the numbers of homicides which occurred in Dade County during the past year and we have attempted to extract some themes and characteristics from the forty-six first degree murder presentations we have heard during our six month Term, as well as from the second degree murder cases filed by the State Attorney's Office.

Some of our observations were the following:

- The percentage of drug related murders, including drugs as a motive in a robbery or vengeful killing as well as those wherein the defendant is under the influence of hard drugs, stands at a very sizeable one-third.
- Robbery is the most frequent motive, standing at forty percent of the murders.
- Sixty percent of the offenders and their victims were relatives, lovers or acquaintances, and eighty-one percent of offenders and victims were of the same race.
- Handguns represented the means used in nearly sixty percent of the killings. Two out of the last four Grand Juries have called for legislation providing for strict handgun control as the most effective single step that can and must be taken to decrease the number of senseless homicides we have witnessed over the last six months.

None of the above themes are new, with the possible exception of the increase in drug-related murders. The principal, and overriding, observation that we make has been made before and yet the problem remains unaddressed: it is futile for us to bemoan the rise in the homicide rate unless and until we, through our Legislators, demonstrate our commitment to a reduction in homicides by the enactment of statewide legislation imposing close regulation and meaningful controls upon the availability of handguns.

IV

In conclusion we once again implore the Legislature to increase the number of Grand Jurors and the rate of reimbursement.

In order for the Grand Jury system to remain viable, if the number of Jurors needed for a quorum is to remain at fifteen, the total number of Grand Jurors must be increased from the present eighteen to twenty-one. We and our predecessor Grand Juries have consistently experienced difficulties in obtaining quorums under these difficult circumstances.

Closely related to the issue of obtaining a quorum is the level of the rate of reimbursement. Ten dollars a day is pitifully inadequate compensation, especially when many of us must take time away from our jobs without pay in order to serve. We recommend a rise in the reimbursement level to thirty dollars a day.

In the last session of the Legislature, such legislation was introduced and nearly passed. We urge that the legislation be proposed again and that it be enacted.

CAPITAL AND OTHER CRIMINAL CASES PRESENTED TO THE GRAND JURY

<u>Defendant</u>	<u>Charge</u>	<u>Disposition</u>
DELORES EVANS	First Degree Murder Possession of Firearm while Engaged in Criminal Offense	True Bill
HILLERY LEO KING	First Degree Murder Robbery Attempted First Degree Murder Unlawful Possession of a Firearm while Engaged in a Criminal Offense	True Bill
DELMIS V. HECHEVARRIA	First Degree Murder Unlawful Possession of a Firearm while Engaged in a Criminal Offense	True Bill
DWIGHT STARLING, MICHAEL HARDEN, FRANK MINNIS and KARL STANLEY	First Degree Murder ("A") Attempted First Degree Murder ("A") Manslaughter ("B" "C" "D") Possession of Firearm while Engaged in Criminal Offense ("A")	True Bill
MICHAEL LORENZO ROZIER	First Degree Murder Burglary of a Dwelling Robbery	True Bill
TYRONE ROLLE	First Degree Murder Burglary Petit Theft Burglary Petit Theft Aggravated Battery	True Bill
MICHAEL ANTHONY ARCHER, JEFFREY ALEXANDER ELLIS, W. L. GAVINS and JOHNNY HOLTON	Sexual Battery Kidnapping Robbery Robbery	True Bill
NATHANIEL LANE, LAWRENCE CAPERS, LEONARD CAPERS, SAMUEL LIGHTSEY, JR., and PATRICK MOORE	First Degree Murder First Degree Murder First Degree Murder	True Bill
DANNY WILLARD PHILLIPS, ANTHONY JOSEPH ROCCO, and RICHARD McMURTRY	First Degree Murder Robbery Unlawful Possession of Firearm while Engaged in Criminal Offense	True Bill

<u>Defendant</u>	<u>Charge</u>	<u>Disposition</u>
NATHANIEL BENDROSS	First Degree Murder Unlawful Possession of a Firearm while Engaged in a Criminal Offense First Degree Murder Unlawful Possession of a Firearm while Engaged in a Criminal Offense	True Bill
CLAYTON WAY	First Degree Murder Attempted First Degree Murder Attempted First Degree Murder Attempted First Degree Murder Possession of a Firearm in the Commission of a Felony	True Bill
MONICA RIVERA, also known as MONICA RIEVRA	First Degree Murder Robbery	True Bill
ANTHONY MORVIANI	Sexual Battery Incest Sexual Battery Incest Sexual Battery Lewd Assault/Act	True Bill
TOMMY LEE HOLMES	Attempted Robbery First Degree Murder Unlawful Possession of a Firearm while Engaged in a Criminal Offense	True Bill
RONNIE LEE JONES	First Degree Murder First Degree Murder First Degree Murder Attempted First Degree Murder Attempted First Degree Murder Burglary of a Structure Robbery Unlawful Possession of Firearm by Convicted Felon Carrying a Concealed Firearm Unlawful Possession of a Firearm while Engaged in a Criminal Offense	True Bill
EARL NESBITT and AMOS ALLEN RAGANS	First Degree Murder Robbery Unlawful Possession of Firearm while Engaged in Criminal Offense	True Bill
DOROTHY ANN TORREY	First Degree Murder	True Bill

<u>Defendant</u>	<u>Charge</u>	<u>Disposition</u>
LYDIA FREENEY	First Degree Murder Unlawful Possession of Firearm while Engaged in Criminal Offense	True Bill
PEDRO COSTELLO	Sexual Battery	True Bill
TYRONE HICKS	First Degree Murder Unlawful Possession of a Firearm while Engaged in a Criminal Offense	True Bill
MARIO TAURO COTO, also known as JULIO JIMENEZ, also known as ALBERTO GOMEZ, also known as RAUL ESTRADA	First Degree Murder First Degree Murder Aggravated Assault Possession of a Firearm during the Commission of a Felony	True Bill
RAYMOND LOVE	First Degree Murder	True Bill
ERNEST FLEMMING	First Degree Murder Burglary of Structure Grand Theft-Second Degree	True Bill
ALBERTO MOREJON	First Degree Murder Burglary of a Structure	True Bill
JORGE CABALLERO, DANIEL LASO, MIGUEL CHAVEZ and ROY THOMAS	I. Armed Robbery II. Kidnapping III. Aggravated Battery IV. Attempted Armed Robbery V. Kidnapping VI. Aggravated Battery VII. Armed Robbery VIII. Kidnapping IX. Aggravated Assault X. Armed Robbery XI. Kidnapping XII. Aggravated Assault XIII. Armed Robbery XIV. Kidnapping XV. Aggravated Assault XVI. Armed Robbery XVII. Kidnapping XVIII. Aggravated Assault XIX. Armed Robbery XX. Kidnapping XXI. Aggravated Assault XXII. Armed Robbery XXIII. Kidnapping XXIV. Aggravated Assault XXV. Armed Robbery XXVI. Kidnapping XXVII. Aggravated Assault XXVIII. Armed Robbery XXIX. Kidnapping XXX. Aggravated Assault	True Bill

<u>Defendant</u>	<u>Charge</u>	<u>Disposition</u>
ANTHONY CARL BROWN	First Degree Murder Robbery Possession of a Firearm while Engaged in a Criminal Offense	True Bill
LISA MORGAN	First Degree Murder	No True Bill
EVERT STAAS	First Degree Murder Unlawful Possession of Firearm while Engaged in Criminal Offense	True Bill
ERNEST SMITH	First Degree Murder First Degree Murder Unlawful Possession of a Firearm while Engaged in a Criminal Offense	True Bill
ADELA ABELLA and IRENE ABELLA	First Degree Murder	True Bill
WILLIAM LEE HIGHLAND	First Degree Murder	True Bill
THERESA LEE MILLER and TERRY WILLIAMS	First Degree Murder Robbery	True Bill
JOSE THOMAS-PEREZ	First Degree Murder First Degree Murder Attempted First Degree Murder Unlawful Possession of Firearm while Engaged in Criminal Offense	True Bill
RICKY LYNN STEELE	First Degree Murder Attempted First Degree Murder Unlawful Possession of a Firearm while Engaged in Criminal Offense	True Bill
KELVIN JEFFREY FAIR, JACKIE CONE and DENNIS REDDING	First Degree Murder Robbery	True Bill
EDUARDO MORALES, ORESTES ARMAS HERNANDEZ, JULIO MANUEL BARZAGA, ESTAVISLAO HERNANDEZ CANTON	Kidnapping Sexual Battery Unlawful Possession of Firearm while Engaged in Criminal Offense	True Bill
CHARLES PATRICK KELLINGTON	First Degree Murder Attempted First Degree Murder Armed Robbery Armed Robbery Burglary of Dwelling Unlawful Possession of Firearm while Engaged in Criminal Offense	True Bill

<u>Defendant</u>	<u>Charge</u>	<u>Disposition</u>
IN RE INVESTIGATION INTO THE DEATH OF LaFONTANT BIEN-AIMEE		No True Bill
AARON DUBINS	Kidnapping Sexual Battery	True Bill
AYMEE CORRALL also known as AYMEE CAMEJO	First Degree Murder Unlawful Possession of a Firearm while Engaged in Criminal Offense	True Bill
ANTHONY OWENS	Robbery Robbery Sexual Battery Unlawful Possession of Firearm while Engaged in Criminal Offense Carrying a Concealed Firearm	True Bill
CHARLES HENRY and ERVIN DURANTE LIGHTSEY	Burglary of a Conveyance Aggravated Assault Kidnapping Armed Robbery Sexual Battery Carrying a Concealed Firearm Possession of a Firearm in the Commission of a Felony	True Bill
ROSETTA BELL	Attempted First Degree Murder	True Bill
LAZARO LUIS ISSAAC-RAMIREZ	First Degree Murder	True Bill
JAMES REED HOLLINGER	Sexual Battery	No True Bill
ISHMAEL BRONSTORPH	Attempted First Degree Murder Robbery Unlawful Possession of a Firearm while Engaged in a Criminal Offense	True Bill
GORDON FREDERICK WISE	First Degree Murder Unlawful Possession of Firearm while Engaged in Criminal Offense	True Bill
FREDDY CHARLES BROWN, TOMMIE JEROME HICKS, FRANKIE L. FANIEL, also known as LIL-JUNE or LITTLE JUNIOR, and TERRANCE LEON PITTMAN, also known as DUST	First Degree Murder Robbery Unlawful Possession of a Firearm while Engaged in a Criminal Offense ("A" Defendant Only)	True Bill

<u>Defendant</u>	<u>Charge</u>	<u>Disposition</u>
MIGUEL ANTONIO ORTIZ also known as JUAN ORTIZ	Attempted First Degree Murder Robbery Unlawful Possession of a Firearm while Engaged in Criminal Offense	True Bill
EMMA THOMAS	First Degree Murder	True Bill
CLIFFORD WILLIAMS	Attempted First Degree Murder Attempted First Degree Murder Unlawful Possession of Firearm while Engaged in Criminal Offense Robbery	True Bill
ALLAN MACIEL DOXON	First Degree Murder Unlawful Possession of a Firearm while Engaged in a Criminal Offense	True Bill
KEITH JOSEPH BANNISTER	First Degree Murder Attempted First Degree Murder Unlawful Possession of Firearm while Engaged in Criminal Offense	True Bill
CHRISTOPHER DUANE FREDERICK also known as RAYMOND CHRIS SHORT	First Degree Murder Kidnapping Robbery	True Bill
THOMAS STEVEN COOK	Burglary Robbery Robbery Attempted Robbery Aggravated Battery	True Bill

ACKNOWLEDGMENTS

As we come to the close of our term as Grand Jurors we would like to express our appreciation of Judge George Orr. He has been a source of relief from the tensions of our sometimes trying and tedious deliberations. On occasion he also related some humorous anecdotes involving his role as a Judge, which not only relieved us from some of the sordid details of our deliberations but also revealed him to be human, judicial, and humorous.

Janet Reno, State Attorney for Dade County, has proven to be a professional counselor with complete objectivity in her dual roles as prosecutor for the State and interpreter of the law and procedures in the complex process of Jurisprudence. She has been consistently balanced and aggressive in her pursuit of truth and justice. We are appreciative of her single-mindedness in pursuing her goals regardless of media criticisms or other diversionary influences.

We also wish to note that Assistant State Attorney Tom Petersen performed his trust as our legal guide in the presentation of the State's cases in an exemplary manner. He is patient, verbal and presents extremely well prepared, in-depth studies of what is being investigated. His attention to detail, ready willingness to pursue our inquiries, and professional conduct has been most appreciated by us.

We especially commend George Yoss, Assistant State Attorney, who presents his cases clearly and makes them easily understood to all. Above all, his subtle sense of humor helped us through some very tense moments.

Special note of thanks to Madeline Camp, Administrative Assistant, who through her pleasant and efficient manner has lightened our task by not only being our secretary, "Girl Friday," but smiling and always available receptionist.

We feel very fortunate to have enjoyed the services of Sam Karlin as Bailiff for this term. Sam has contributed to our welfare and tranquility with generous coffee and snacks and other niceties when needed. Our thanks to him for his concern and thoughtfulness.

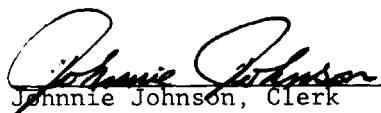
Grand Jury service is a public duty which each of us found, much to our surprise, an enlightening and memorable experience.

Respectfully submitted,



Samuel F. Rahmings, Foreman
Dade County Grand Jury
Spring Term 1980

Attest:


Johnnie Johnson, Clerk

Dated: November 12, 1980