



JAMAICANS FOR JUSTICE

For Want of a Nail

**Jamaicans For Justice (JFJ) Submission to
The Jamaican Justice System Reform Initiative**

February 28, 2007

For Want of a Nail

For want of a nail the shoe was lost.

For want of a shoe the horse was lost.

For want of a horse the rider was lost.

For want of a rider the battle was lost.

For want of a battle the kingdom was lost.

And all for the want of a horseshoe nail.

Anonymous

Introduction: The JFJ Perspective

Violent and organised crime threatens to overwhelm our beautiful island nation and our current justice system is weak, dysfunctional and no match for the tasks it faces. Few would argue that the Jamaican justice system isn't in a state of crisis. *The Jamaican Justice System Reform* initiative has laudable goals which Jamaicans for Justice (JFJ) supports: a modern justice system that is efficient, accessible, accountable, fair and able to deliver timely results in a cost-effective manner. None-the-less, there have been many excellent studies and proposed reforms that came before this initiative and they have, inevitably, failed to be implemented.

Jamaicans For Justice sincerely hopes the insights, recommendations and strategies resulting from this initiative will appropriately address the issues and, further, actually receive the political will and support necessary for change. JFJ believes that as we address unfairness and inaccuracy in the criminal justice system we must do so with a holistic approach. Police and court reform must take place in juxtaposition to be successful and to result in ensuring that even the most vulnerable in our society can access justice and be guaranteed fair and equal treatment.

Since its inception in 1999, JFJ has accumulated a considerable amount of data relating to the justice system, including information on issues regarding arrest and detention, access to legal aid, the performance of investigative bodies, and the functioning of the courts. We have witnessed far too many grave injustices and inordinate delays endured by Jamaicans in their quests for justice. It is unacceptable. Jamaicans have lost faith in the system of justice in their country, if indeed they ever had it, and they so desperately want and need to have that faith. We are committed to creating a justice system that will serve all Jamaicans equally and fairly and thereby establish or regain their confidence.

We hope that the data and recommendations we present in this submission will assist the nation in moving forward in the right direction: towards a justice system that will bring peace to Jamaica by adherence to the rule of law and to human rights as set out in the

Jamaican Constitution and the Universal Declaration of Human Rights. As Martin Luther King Jr. said, “True peace is not merely the absence of tension: it is the presence of justice.”

Initial Stages: Detention & Access to Legal Aid

When suspects are detained or arrested the initial events that unfold at police stations are of extreme importance to the eventual outcome of a case. Confessions, either true or false, may be obtained, evidence is gathered and decisions are made that will inevitably influence the course of justice. The significance of this stage of the justice process must not be overlooked as we seek to provide equal access to justice for all Jamaicans.

In Jamaica, the law requires detained suspects to be charged with a crime or released within a reasonable time frame after being detained. The law also requires police to inform persons detained or arrested of their right to legal aid and to duty Counsel representation in most criminal matters punishable by imprisonment. If requested by the detained or arrested person the law further requires police to contact duty Counsel to provide representation at police stations and, in appropriate circumstances, until cases go to trial.

The need for duty Counsel and legal aid representation in Jamaica is overwhelming but there are shortages of attorneys readily available to deal with the demand. The number of attorneys available and willing to serve as duty Counsel or to provide legal aid services has steadily fallen since the introduction of the system in 2001, primarily because of long delays in payment of invoices and inadequacies of fees. Even if an individual is able to procure duty Counsel or a legal aid attorney, these attorneys are often unable to show up in court because they have multiple matters on the same day and, at times, in different parishes. As a result cases are either adjourned or individuals choose to represent themselves which, in the later situation, too often leads to their not being adequately represented.

Since 1999, Jamaicans for Justice has received 362 complaints in regard to detention and access to legal aid. Not only are suspects being held longer than reasonably necessary before being charged or released, they are also being photographed and fingerprinted without their consent in circumstances which are not permissible by the Fingerprints Act,

such as without having a lawyer or duty Counsel present, or without proper authorization from the appropriate authority. Our records indicate that 114 suspects complained about prolonged detention without being charged – anywhere from three days to three weeks – or until an identification parade was held. Three of our complainants claimed that the police waited until after identification parades before contacting duty Counsel and 47 complainants allege that they were abused while detained. JFJ has both witnessed and received allegations that some police officers are discriminatory in regard to contacting duty Counsel and call on selected attorneys, who, presumably, are more sympathetic to the police.

Another aspect of detention that requires attention is the granting of bail. Despite recent developments in the law significantly increasing the types of offences for which bail may be granted and the number of officers who may grant bail, complaints are received that police officers often exhibit reluctance in considering or granting bail, even for less serious offences. It is also not uncommon for police officers in charge of detainees to fail to deliver them to court on the proper date or at the correct time, either to apply for bail or to attend trial. JFJ is also concerned about the practice of unnecessarily detaining persons on a Friday evening, preventing them from being brought to the court to request bail until Monday, resulting in the person being held at the station over the weekend without being charged.

Through our work in regards to detention and access to legal aid it has become apparent that neither the police nor the public has an adequate awareness or knowledge of their rights and responsibilities in terms of the Jamaican Constitution and Jamaican laws.

The following chart illustrates the problems JFJ has recorded regarding detention as well as the outcome or status of each case. It should be noted that while JFJ has been recording data for a number of years we do not actively recruit clients to file complaints with our organization. It is reasonable to assert there is a large number of Jamaicans who have been unjustly detained but who have not lodged any complaints and that our data is only an indicator of a much larger problem.

Figure 1

YEAR	PROLONGED DETENTION BEFORE CHARGING or RELEASING SUSPECTS	PROLONGED DETENTION AWAITING IDENTIFICATION PARADE	DETENTIONS THAT ARE IN ACCORDANCE WITH THE CONSTITUTION	DETENTIONS INVOLVING ABUSE	OUTCOME
1999				27 suspects (referred to proper agencies)	27 suspects released
2000	2 suspects (6 days)		5 cases of lawful detention		3 suspects released 2 suspects charged 2 suspects outcome unknown
2001	7 suspects 2 suspects (no duty Counsel contacted)	3 suspects 1 suspect (19 days)	6 cases of lawful detention		5 suspects released 7 suspects charged 7 suspects outcome unknown
2002	10 suspects 1 suspect (7 days) 1 suspect (21 days)	3 suspects 3 suspects (no duty Counsel contacted)	15 cases of lawful detention	3 suspects (referred to proper agencies)	5 suspects released 24 suspects charged 7 suspects outcome unknown

YEAR	PROLONGED DETENTION BEFORE CHARGING or RELEASING SUSPECTS	PROLONGED DETENTION AWAITING IDENTIFICATION PARADE	DETENTIONS THAT ARE IN ACCORDANCE WITH THE CONSTITUTION	DETENTIONS INVOLVING ABUSE	OUTCOME
2003	20 suspects	15 suspects	16 cases of lawful detention	10 suspects (referred to proper agencies)	16 suspects released 25 suspects charged 20 suspects outcome unknown
2004	16 suspects 1 suspect (14 days)	1 suspect (no attorney present) 1 suspect 1 suspect (30 days & appeared in 3 ID parades)	35 cases of lawful detention	2 suspects (referred to proper agencies)	19 suspects released 22 suspects charged 16 suspects outcome unknown
2005	40 suspects 1 suspect (21 days) 1 suspect (38 days for interrogations)	3 suspects	32 cases of lawful detention	3 suspects (referred to proper agencies)	22 suspects released 26 suspects charged 32 suspects outcome unknown
2006	18 suspects	4 suspects	15 cases of lawful detention	2 suspects (referred to proper agencies)	8 suspects released 22 suspects charged 9 suspects outcome unknown

Many of the cases that JFJ becomes involved in illustrate blatant cases of human rights abuses and such practices ought not to be tolerated at this or any other stage of the criminal justice system. The United Nations *Declaration of Human Rights*, Article 9, states that: “No one shall be subjected to arbitrary arrest, detention, or exile.” Further, the United Nations *Code of Conduct for Law Enforcement Officials* states that, “in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.” Regrettably, this is not the experience of a large number of persons who pass through Jamaica’s criminal justice system.

Detention and Legal Aid: Recommendations for Change

JFJ believes that the problems regarding detention and legal aid in the Jamaican justice system can be solved with improved administrative practices, enforcement of professional behavior and increased resources especially in regard to duty Counsel and legal aid. Indeed, the problems at these stages of the system must be solved in order to ensure justice is served and human rights respected. JFJ recommends that:

- Police officers who fail to inform detainees of their rights or fail to contact duty Counsel or legal aid on their behalf should be penalized with a fine and/or disciplinary action;
- Allegations of abuse must be investigated immediately and the accused officers immediately relieved from duty until cleared of wrong doing by appropriate procedure;
- Station commanders must be held accountable for breaches of the law committed by officers under their command, penalized with either a fine or demotion;
- Increased financial support and prompt payment for duty Counsel and legal aid;
- Education campaigns for both the public and the police should be developed and implemented, explaining the rights and responsibilities of both the state and citizens in regards to detention and arrest; and

- To eliminate the possibility of select lawyers being called, officers should phone the Legal Aid Counsel office and a third party should contact the appropriate, available attorney at their discretion as opposed to the preference of the arresting officer.

Investigative Bodies: Searching for Truth

Investigative bodies play a vital role within the criminal justice system and it is imperative that their performance be unbiased and professional if they want the confidence, respect and support of the citizenry. Falling under the responsibility of the Ministry of National Security, the Jamaican Constabulary Force (JCF) is mandated to conduct investigations into crimes allegedly committed by both the public and its own members. The Bureau of Special Investigations (BSI), a division of the JCF, specifically addresses police shootings and upon completion of their investigations, sends the findings to the Director of Public Prosecutions (DPP) to determine if anyone should be charged or if cases should go to the Coroner's Court for a determination whether anyone should be charged. Other investigative bodies in the Jamaican justice system include the JCF Professional Standard Branch (PSB), which investigates police corruption and other misconduct, and the civilian body, the Police Public Complaints Authority (PPCA), which oversees investigations conducted by the other two bodies and can initiate its own investigations.

Jamaicans for Justice has a number of concerns with the inefficiencies, unprofessional conduct and repeated failures of these investigative bodies. We contend that, functioning as they currently do, they prove a major disadvantage to the effectiveness of the justice system and to the realization of justice for Jamaican citizens. The problems we have observed and documented include:

- Failure or delays, sometimes by days, to visit the crime scene resulting in loss of vital evidence, including from eyewitnesses, such as in the cases of Evon Baker Craig Vacciana and Omar Graham (Coroner's Court, Westmoreland); Rayon Williams (Coroner's Court, Westmoreland); and Christopher McKenzie (**R. v. Ceceil Wright-Anderson and Others**, Clarendon Circuit Court);
- Failure to preserve crime scenes by prematurely moving bodies, picking up spent shells and generally disturbing evidence, such as in the case of Nicholas Moody and Kevin Gordon (Coroner's Court Kingston/St. Andrew) where there were eyewitness allegations that the police picked up spent shells from the scene and

- where the bodies of Nicholas Moody and Kevin Gordon were moved before the relevant personnel arrived on the scene;
- Failure to collect evidence, including samples, swabs, clothing or statements from material or eyewitnesses, such as in the cases of Evon Baker and Others and Sandra Sewell and Gayon Alcott (Coroner's Court, Kingston/St. Andrew) where the scene of the shooting was not adequately protected and blood samples, among other things, were not collected. Also, in the Sandra Sewell and Gayon Alcott case a gun allegedly taken from the deceased was not tested for fingerprints;
 - Failure to conduct adequate and complete autopsies often resulting in vital evidence being lost, as in the case of Evon Baker and Others where a bullet was left in the head of one of the deceased and was only removed after the family insisted on a second post mortem being conducted. In the case of Sandra Sewell and Gayon Alcott an overseas forensic pathologist severely criticized the post mortem procedure utilized by the government pathologist;
 - Failure to adequately complete or document autopsies, such as in the case of Dwayne Graham (Coroner's Court, Kingston/St. Andrew) where there were significant differences between the post mortem reports of the government pathologist and the independent observer, including a record of a gunshot wound to the back in the report of the independent observer but not in the report of the government pathologist. Also, in the case of Sandra Sewell and Gayon Alcott, it was observed that the government pathologist failed to analyse clothing as part of the post mortem examination. The government pathologist also failed to attend the scene of the shooting promptly enough to make any helpful observations which could have assisted in determining how the deceased came to their deaths;
 - Inadequate and questionable analysis of samples collected, such as in the case of Desmond Fraser (Coroner's Court, Kingston/St. Andrew) where the swab test revealed no gunpowder residue on the hands of the police officers even though they had admitted to firing at the deceased; and
 - Failure to protect vital evidence resulting in it being lost or destroyed prior to trial, such as in the cases of Janice Allen (**R. v. Rohan Allen**), Christopher McKenzie, and the Flankers case (**R. v. Bibzie Foster, Donald Thomas, Metro**

McFarlene, Kevin Williams and Kadian Smith), all murder cases where the firearms register linking police to particular guns became missing or was destroyed.

Such poor professional practices and inadequate investigative procedures will never command the confidence of the public or lead to justice ultimately being served. Investigative bodies need to be able to ensure that they are able to collect and preserve vital evidence in an unbiased and diligent manner, especially given the pivotal role this evidence can play in determining the guilt or innocence of an accused person. This is particularly difficult, however, when the JCF's Bureau of Special Investigations is investigating complaints against JCF colleagues in other branches – especially in the area of police killings. There is an unacceptably high probability for bias when JCF officers are investigating fellow JCF officers and collecting evidence that could be potentially incriminating.

For years, JFJ has advocated for a truly independent investigative body with adequate funding and resources, and that isn't subject to political pressures. The problem of police investigating police expands outside the boundaries of the JCF and often involves other branches of employment within the Ministry of National Security. Currently, various stages of investigations, such as post mortem examinations, are conducted by employees from one branch of the Ministry of National Security against employees from another branch of the same ministry. This poses increased chances of biased mismanagement of the investigations due to allegiances to fellow government employees as well as of biased opinions as to the cause of death and the significance of any injuries suffered by the deceased.

Although the existing Police Public Complaints Authority is meant to be an independent, non-police agency with the power to investigate allegations of misconduct filed by members of the public against members of the JCF, it must rely on the Ministry of Justice for its funding. The PPCA's annual report to Parliament is submitted through the Ministry rather than directly to Parliament. Additionally the PPCA Act gives the

Authority no power to initiate action; it may only make recommendations to the Police Commissioner or the DPP based on the findings of its investigations. Neither the Police Commissioner nor the DPP is obliged to report to the PPCA on actions taken or, indeed, to take any action at all. The PPCA has been seriously under resourced and under funded during the years of its existence and autonomy. Sadly, the PPCA's poor record seems to indicate a lack of political will and resource allocation necessary to make it an effective body. JFJ sent notice to the PPCA in September 2006, that it would no longer refer clients to them for the following reasons:

- The PPCA's failure to give updates promptly to family matters, or at all, on the cases it is supposed to be monitoring;
- The PPCA's failure to effectively oversee the investigations of the BSI and the PSB;
- The fact that statements taken by the PPCA frequently are not sent to the Coroner in the cases of killings by state agents and therefore crucial witnesses are not subpoenaed to give evidence at Inquests;
- The PPCA discontinuing, to our knowledge, representation of clients at internal hearings of the Jamaica Constabulary Force or in court;
- The PPCA's failure to send documentation on behalf of clients to the relevant bodies/authorities; and
- The PPCA's failure to make recommendations to the Director of Public Prosecutions on behalf of clients.

Observations from Files

The following observations from our files further illustrate the unprofessional and repeatedly inadequate performance of investigative bodies in our justice system.

Troy Coombs (Coroner's Court, Kingston/St. Andrew)

- Troy Coombs was fatally shot on August 11, 2004. The BSI didn't photograph the deceased before August 19, 2004.
- The BSI did not take any photographs at the scene of the crime and spent gun shells had to be recovered by the family of the deceased to hand to BSI personnel.

- There was no testing on the gun allegedly recovered from the scene for fingerprints to verify whether the deceased actually had the gun.
- The cause of death was not fully stated on the post mortem report and the report concentrated on gunshot wounds with no findings noted on stomach contents, etc. In addition, the post mortem notes contained no analysis on the clothing of the deceased in relation to bloodstain patterns.

Festus Watson (Coroner's Court, Morant Bay)

- Festus Watson was fatally shot on June 7, 2000. BSI personnel did not arrive before June 8, 2000, to investigate the crime scene.
- There was no forensic testing for fingerprints done on the knife the deceased allegedly had in his possession.
- The post mortem report failed to indicate whether or not there was gunpowder deposition on the gunshot wounds suffered by the deceased.

David Stennett (Coroner's Court, St. Ann's Bay)

- David Stennett was fatally shot on January 18, 2003. BSI personnel only arrived on the scene on February 20, 2003.
- BSI photographs of the scene were only taken on April 9, 2003.
- There was no forensic testing for fingerprints done on the firearm allegedly recovered from the crime scene.

Craig Campbell (Coroner's Court, Kingston/St. Andrew)

- Craig Campbell was fatally shot on November 24, 2000. BSI only began their investigation on November 27, 2000.
- There was no forensic testing for fingerprints done on the knife allegedly recovered from the deceased.
- No sketch of the area where the incident allegedly occurred was provided in court to assist the court in figuring out whether incident could have taken place in the way it was alleged.

Herbert Gayle (Coroner's Court, Kingston/St. Andrew)

- There was incorrect labeling of forensic swabs allegedly taken from the deceased.

Desmond Fraser (Coroner's Court of Kingston/St. Andrew)

- Forensic swab test results on police who admitted firing at the deceased did not show any gunpowder residue.
- The firearm allegedly recovered from the deceased was not tested for fingerprints.
- The post mortem report contained minimal information, referring to the cause of death as gunshot wound to chest and abdomen rather than the proper medical-termed cause of death.

Fitzroy Whitter (Coroner's Court, Kingston/St. Andrew)

- Statements taken by the PPCA did not form part of the Coroner's file.
- The post mortem report was deficient in information and explanation.

Nicholas Moody/Kevin Gordon (Coroner's Court, Kingston/St. Andrew)

- BSI personnel only began their investigation the day after the incident occurred.
- There were allegations that police picked up spent gun shells before the investigator arrived on the scene.
- The post mortem report was deficient in information and explanation.

Christopher McKenzie (Circuit Court, Clarendon)

- Forensic testing on the hands of the officer who admitted to firing the gun showed gunpowder residue only at trace level.
- The firearm register for BSI was missing during the trial.

Damion Roache (Coroner's Court, Kingston/St. Andrew)

- Statements given by civilians to the PPCA did not form a part the Coroner's file but the Coroner's Inquest was still conducted. As a result, the Inquest had to be quashed for insufficient evidence.

Investigative Bodies: Recommendations for Change

- JFJ contends that a truly independent investigative body would be the best vehicle through which to conduct unbiased investigations into complaints and allegations against police, especially in cases of fatal shootings in which there are allegations of extra judicial killings. The PPCA should be given adequate resources, funding, training, powers and autonomy so that it can effectively help end impunity for corrupt and abusive elements within the police organisations. The PPCA should

be further empowered to initiate prosecution or issue recommendations to the Police Services Commission and the Police Commissioner. By publicising its findings and making them easily accessible to the public, a truly independent PPCA could send the message that the police will be held accountable for wrongdoing and help regain the confidence of the public.

- In the matter of JCF officers investigating crimes that do not involve the police, the officers should be required to have a certain standard of training and they should further be required to refresh or update that training from time to time to ensure their investigative skills and knowledge are current. JFJ is heartened by current liaising with overseas governments in order to strengthen the intelligence gathering and other capabilities of the JCF and believes that this should continue.
- It is imperative that police officers be trained or re-trained in relation to interacting with members of the public.
- The PSB or other such agency should covertly train special agents to be sent out undercover to report on any corrupt or unethical practices found.
- The BSI, or any future organization investigating police killings, should have an office in each parish so as ensure prompt arrival at crimes scenes, proper collection and preservation of evidence, timely interviews with eyewitnesses and to prevent any tampering with the crime scene. The BSI should be properly staffed and equipped to enable it to carry out its task effectively.
- The Forensic Pathology Department should be made independent of the Ministry of National Security, falling instead under the auspices of the Ministry of Health. Resources must be made available to provide a proper forensic autopsy facility with the appropriate x-ray, refrigeration and laboratory equipment to ensure that forensic evidence admitted into courtrooms is of a satisfactory standard.

- In cases where evidence of any kind has been received in relation to police killings there needs to be a special storage area at the Office of the Commissioner of Police and a storekeeper directly accountable to the Commissioner of Police. Another alternative would be to appoint a new body in relation to the storage of such evidence.

For Want of a Nail – the Coroner’s Court Experience

The Coroner’s Court is a branch of the Resident Magistrate’s Court. A Resident Magistrate Court is located in each parish, to which at least one Resident Magistrate is attached. Each Resident Magistrate is the Coroner for the parish or parishes of assignment and is responsible for holding Coroner’s Inquests and preliminary Inquiries into criminal matters. It must be noted that Kingston and St. Andrew has a Coroner’s Court, different from the Resident Magistrate’s Courts in the other parishes, and a Coroner is assigned to that post full time.

Jamaicans for Justice has been watching matters in Coroner’s Courts since 1999 and, as with other sections of the judicial system, we have witnessed the Coroner’s Courts being overburdened and operating with inadequate resources which, combined with a myriad of other problems, causes inordinate delays in the delivery of justice. The resulting backlog of cases and miscarriages of justice become, in many cases, abuses of fundamental human rights and must be addressed to arrest the endemic trend of inefficiency, serve justice as it should be served and create confidence in the system as a whole.

Many cases are held up for years in Coroner’s Court before being ruled on and others are adjourned, *sine die*, due to the absence of witnesses. Although we are focusing here on the Coroner’s Court it must be noted that it takes far too long for cases to get to the Court, having first to go through delaying inefficiencies at the investigative stages of the justice system as well as long delays in getting rulings from the DPP.

Jamaicans for Justice has watched a number of cases in Coroner’s Courts throughout the island and is currently watching matters before the Coroner’s Courts of Kingston and St. Andrew, St. Ann’s Bay, Savanna-la-mar, Montego Bay, Port Maria, St. Elizabeth, and Morant Bay. Regrettably, despite some of the inquests having commenced, none of the matters that have begun since 2004 have come to an end.

In the confines of this submission we can only begin to express the systemic weaknesses we have observed in Coroner’s Courts, which include:

- Inadequate frequency of Coroner's Court sessions in rural areas, resulting in a growing backlog of cases;
- Inadequate number of magistrates, clerks and support staff;
- Inadequate use of technology, especially in regards to practice of the official notes of evidence having to be hand written by the Coroner;
- Repeated adjournments leading to the loss of witnesses, evidence and jurors, as well as the possibility of jurors not remembering evidence due to the passage of time;
- Inability or failure to schedule hearings on consecutive days;
- Problems with witnesses including an inadequate system of subpoenaing witnesses and reoccurring absences of eyewitnesses, formal witnesses and police witnesses;
- Inadequate system of subpoenaing jurors and the ensuing problems regarding availability of jurors and the use of regular jurors who sit repeatedly on numerous different cases, often over a period of years;
- Coroners failing to issue warrants for witnesses, especially police witnesses who are absent without informing the court as to the reason;
- Inadequacies of facilities, including: poor signage, lack of parking, sub-standard washroom facilities, unacceptable noise levels in the court, lack of air conditioning, improper lighting and poor access for people with disabilities;
- Poor communication with families of the deceased, including the failure to provide notification of when the inquest will begin and to provide information on the responsibilities and rights of the family members;
- Lack of public knowledge of the processes of the justice system, including Coroner's Court, and inadequate education campaigns to address the problem; and
- Legal aid not available for families with matters before Coroner's Court, leaving too many Jamaican's without legal counsel at this important stage of the justice system.

Infrequent Sessions

The inadequate frequency of Coroner's Court sessions scheduled to deal with cases is one of the contributing factors to the current backlog. The Coroner's Court for Kingston and St. Andrew operates Monday to Friday, but still has a backlog of cases, some dating back as far as 1998. The matter touching on the death of Hapete Henry is an excellent example of the inability of the Kingston and St. Andrew Coroner's Court to deal with matters in a timely manner. Mr. Henry was fatally shot by a JCF officer in 1998 and his case was first heard in the Kingston and St. Andrew Coroner's Court in 2000, but was not concluded. The case once again commenced in the Court in 2004, only to experience continued inefficiencies that caused delays resulting in 20 hearings held over the course of more than two years. After the initial Inquest began the Coroner was reassigned and the Inquest had to begin anew. To date the matter has yet to be concluded and will appear before the Coroner again on March 22, 2007. It is untenable, but not singular, that in the course of nine years, this case has not yet concluded in the Coroner's Court.

In some parishes the Coroner's Court only sits once or twice per month which causes unwarranted delays when cases are adjourned and further contributes to the burgeoning backlog across the country. It is not uncommon for the next convenient court date to be from six months to a year later. The case of Evon Baker and Others, for example, first appeared before the Coroner's Court in Savanna-la-Mar on March 31, 2005, but after several different adjournments evidence only began in November 2006, and the case has now been adjourned until March 15, 2007, the Court having been informed on the last occasion that two of the jurors have some affiliation with the Savanna-la-Mar police station. In Savanna-la-Mar the Coroner's Court usually sits only twice per month and rarely three times per month. The David Stennett matter, which went to the St. Ann's Bay Coroner's Court in 2004, was adjourned from December 5, 2006, to May 7, 2007. That date being the earliest on which the court could hear the matter having regard to the other Coroner's cases and the regularity with which the court sits. In St. Ann's Bay the Coroner's Court only sits on the first Monday of each month. The reoccurring nature of this problem is illustrated in the following chart.

Figure 2

Parish	Date of Incident	First Date in Court	Number of Hearings	Last Date in Court	Date Ended in Court	Length of Time in Court	Outcome
Clarendon	09-01-2001	28-01-2002 *	2		13-05-2002	1 ½ years	Closed
Hanover	25-08-2000	26-02-2001 *			26-04-2001	2 months	Closed
Kingston	21-08-1999	04-12-1999			21-12-1999	14 days	At the Inter-American Commission on Human Rights
Kingston	21-04-2000	10-04-2001 *	16	06-05-2003		2 years	Closed
Kingston	02-09-1999	26-09-2000 *	19		29-01-2002	1 ½ years	Open verdict
Kingston	13-12-1999	08-11-2000	8		29-05-2001	6 months	Closed
Kingston	07-01-1999	03-04-2001 *	25		28-11-2003	2.5 years	Open verdict
Kingston	24-11-2000	06-01-2003 *	8	06-02-2007		4 years	Ongoing
Kingston	14-12-2000	18-06-2001 *	17		27-02-2004	2 ½ years	Open verdict
Kingston	22-10-1999	26-04-2001 *	18		27-06-2002	1 year	Closed
Kingston	19-01-2001	18-03-2003 *	15	11-01-2007		4 years	Ongoing
Kingston	21-07-1999	22-05-2001 *	13	24-03-2003		2 years	Closed
Kingston	26-05-2001	22-08-2002 *		19-05-2004		2 years	Closed
Kingston	01-01-1998	07-08-2001	12		24-06-2002	8 ½ months	Closed
Kingston	15-08-2001	19-07-2004 *	13	26-02-2007		2 ½ years	Ongoing
Kingston	13-09-2001	05-11-2002 *			06-05-2003	6 months	Closed
Kingston	20-12-2001	20-01-2004 *	9		01-12-2005	2 years	Closed
Kingston	09-02-2002	18-02-2004 *	5		08-11-2004	9 months	Closed

Parish	Date of Incident	First Date in Court	Number of Hearings	Last Date in Court	Date Ended in Court	Length of Time in Court	Outcome
Kingston	17-03-2002	06-04-2004 *	3		15-07-2004	30 days	Closed
Kingston	09-04-2002	27-03-2003 *	16	11-01-2007		4 years	Ongoing
Kingston	29-05-2002	27-05-2003 *	16	10-01-2007		4 years	Ongoing
Kingston	18-06-2002	31-12-2002 *			09-03-2004	1 ½ years	Closed
Kingston	17-02-2003	11-10-2004	7		25-11-2004	30 days	Closed
Kingston	19-06-2003	25-10-2004	5		10-01-2005	6 months	Court of Appeal
Kingston	02-08-2003	05-12-2006	3	12-02-2007		2 months	Ongoing
Kingston	11-08-2004	04-07-2006	5	11-01-2007		6 months	Ongoing
Kingston	19-09-2004	31-10-2005	11	29-01-2007		1 ½ years	Ongoing
St. Andrew	04-07-2000	17-02-2001 *	9		14-12-2001	10 months	Closed
St. Andrew	02-09-2000	15-06-2001 *	11		18-07-2003	2 years	Closed
St. Andrew	20-09-1999	03-05-2001 *	14	13-03-2003	13-03-2003	2 years	Closed
St. Andrew	12-10-1999	04-09-2000 *			12-03-2001	6 months	Closed
St. Andrew	16-10-1998	05-04-2001	14		03-10-2002	1 ½ years	Closed
St. Andrew	13-06-2001	22-08-2002 *		14-05-2004		2 ½ years	Closed
St. Andrew	23-10-2001	09-01-2003 *			30-06-2003	6 months	Closed
St. Andrew	08-09-2001	29-08-2002 *		22-01-2003	22-01-2003	5 months	Closed
St. Andrew	01-10-2003	28-01-2004	12	24-01-2007		3 years	Ongoing
St. Andrew	22-04-1998	26-05-2004 *	18	05-02-2007		3 years	Ongoing
St. Ann	18-01-2003	17-06-2004	9	05-12-2006		2 ½ years	Ongoing
St. Catherine	16-11-1999	26-07-2001 *	5		29-11-01	4 months	Closed

Parish	Date of Incident	First Date in Court	Number of Hearings	Last Date in Court	Date Ended in Court	Length of Time in Court	Outcome
St. Catherine	11-05-2000	14-09-2001 *	12		18-12-2002	2 years	Closed
St. Catherine	06-03-2002	19-07-2004 *	3		05-08-2004	21 days	Closed
St. Catherine	09-07-2002	15-09-2003	9		04-12-2003	4 months	To Trial
St. Catherine	28-09-2002	01-03-2004 *			24-05-2004	2 months	Closed
St. Catherine	03-01-2003	01-03-2005 *			09-06-2005	3 months	Closed
St. Catherine	25-02-2003	23-06-2004			11-11-2005	1 ½ years	Closed
St. James	06-09-2001	25-09-2002 *	8		02-05-2006	4 years	Sine Die
St. Mary	13-12-2000	02-10-2001 *	7		25-11-2002	1 year	Closed
St. Mary	14-04-2002	31-05-2004 *	3		20-06-2005	1 year	Closed
St. Mary	22-01-2004	05-12-2006	3	24-01-2007		2 months	Ongoing
St. Thomas	07-06-2000	02-08-2001	11	19-01-2007		5 ½ years	Ongoing
Westmoreland	28-09-02	02-12-2004	7	30-11-2006		2 years	Ongoing
Westmoreland	02-05-2003	21-08-2003 *	6		03-06-2004	1 year	Closed
Westmoreland	02-03-2004	31-03-2005 *	5	18-01-2007		2 years	Ongoing

Date with an asterisk (*) are either the date the matter was sent to the Coroner's Court by the Director of Public Prosecutions (DPP) or the date that the DPP made the ruling for Coroner's Court

Inadequate Number of Jurors

Compounding the delays and backlog due to the inadequate frequency of court sessions, the Coroner's Court also suffers from the reoccurring problem in forming juries. The Coroner's Act stipulates a maximum of 30 jurors be subpoenaed for each matter to appear before the Court and sets a minimum of five jurors before a matter can begin. It is decidedly not prudent to begin with only five jurors, however, as if one becomes unable to attend over the course of the hearings the Inquest must begin anew, unable to continue with less than the minimum number of jurors. Despite efforts to subpoena prospective

jurors, the Returns (the form which indicates the names of the jurors to be served) are often either not presented to the court or when they are presented, invariably, most of the jurors to be summoned are listed as having migrated, removed, not found, or not known at address. Usually, only a few jurors are noted as being personally served and often even these jurors do not attend court or they attend only to submit excuses for their inability to serve. JFJ has recently learned that the jury list currently being used by the Kingston and St. Andrew Coroner's Court is the 2002 voter's list. Obviously, in many instances the contact information will no longer be valid, explaining the inability to locate some jurors.

JFJ has witnessed many matters before Coroner's Court adjourned, time after time, unable to commence due to a lack of jurors. The Coroner's Act, section 23 provides a penalty of \$4,000.00 for jurors and witnesses who fail to attend and although there is provision for a warrant to be issued when jurors fail to appear this procedure is rarely adopted nor the penalty imposed.

Professional Jurors

The difficulty in forming juries not only causes delays but has also led to the practice of using professional jurors, so called because they attend court every day and serve as jurors on multiple cases and do so for the stipend offered. From 1999 until 2006, JFJ recorded that in almost every case we monitored in the Kingston and St. Andrew Coroner's Court the jury was partially or completely comprised of the same jurors. Such practice is clearly contrary to the principles of the jury system and brings into question the validity of rulings by these juries. Fortunately, recent amendments to the Coroner's Act have created more distinct clarification in regards to juror qualifications.

The use of professional jurors in Coroner's Court had become such a problem that JFJ filed suit in the Supreme Court in respect of the matter concerning the death of Dwayne Graham. The matter concluded in the Kingston and St. Andrew Coroner's Court in January 2005, with the jurors returning a verdict of justifiable homicide. JFJ challenged the use of the said professional jurors, among other issues, and obtained a favourable judgment in the case (**Dionne Holness v. Coroner of Kingston and St. Andrew and the**

Attorney General, decided September 18, 2006). Fortunately, since this ruling of the Supreme Court, the Coroner's Court of Kingston and St. Andrew has begun to summon jurors in respect of all new cases before it and utilizes the professional jurors only in respect of matters that were already started before the court.

Non-Attendance of Witnesses

Another major contributor to the delays in Coroner's Courts is the chronic problem of witnesses not attending court, which further prevents matters from beginning/concluding. In the Coroner's Courts of Kingston and St. Andrew and St. Catherine, the service of subpoenas on witnesses is done through process servers from the Detention and Courts branch of the JCF. These process servers also serve papers for the Resident Magistrate's, Supreme Courts, and Court of Appeals, and they too become backlogged. Although it is the responsibility of the investigating officers to ensure that witnesses attend court they routinely fail to take an active role, repeatedly relying on the process servers to serve subpoenas on witnesses. Some investigating officers are noticeably reluctant when JFJ Counsel asks the court to insist they take part in locating witnesses.

In some matters before the Kingston and St. Andrew Coroner's Court JFJ has witnessed occasions when there have been no returns at all for witnesses and matters have had to be adjourned as a result of non-service. Even when subpoenas are served the failure to submit returns promptly results in the court being unable to ascertain – prior to the actual court date – whether in fact the witnesses have been served. This, in turn, leaves the court unable to determine whether new summonses need be sent out and further unable to do so in advance of the court date, adding to the accumulative delays. JFJ has also witnessed situations where a return indicates that the witness no longer resides at the address but our independent inquiry reveals that the witness still resides at the address on the witness statement, as in the case of Sandra Sewell and Gayon Alcott. This calls into question whether the process servers always visit the addresses given and the ability of the offices of Detention and Courts to process the large number of subpoenas for which they are responsible.

Under Section 22A of the Coroner's Act, the Coroner may appoint a special bailiff in the event that the person entrusted to serving the subpoena fails to do so within 14 days after the issue of the subpoena. This special bailiff is chosen from a panel of persons selected by the Coroner but has to be officially appointed by the Chief Justice. Despite requesting this action on a number of occasions, JFJ has not observed a Coroner appointing a special bailiff, even in cases where the frequent absence of particular witnesses, either civilian or police, has caused inordinate delays.

Some witnesses simply do not wish to be found, especially if they have a vested interest in not testifying, or if they have been threatened or intimidated into not testifying. Disturbingly, witnesses from time to time express fear of giving evidence against police or military personnel as they believe that they will be killed or harmed by these persons or their colleagues, and some witnesses actually state they have received such threats. In many cases the matter fails to proceed because witnesses lose faith in this process of justice and stop attending court, having become frustrated by both the length of time the matter takes to reach Coroner's Court and by the many adjournments and postponements once there.

In the long drawn out case of Andre Edwards which began before the Coroner's Court in 1999 and concluded in 2002, having gone through two separate inquests, some witnesses suffered police harassment and became afraid to attend court, some became tired and frustrated with the process and stopped attending court, and others moved away and stopped attending court. Further, one of the chief witnesses was murdered during the time the matter was awaiting completion and the investigating officer became ill and was off the island to receive medical attention. For cases that drag on for years it is unrealistic to expect witnesses will repeatedly attend court for a protracted period of time and the potential loss of evidence increases the longer a matter is before the court.

Problems of Police Witnesses

In a number of matters it is police witnesses who have been absent, thereby preventing matters from beginning, proceeding or concluding. It is recognized that on a number of

occasions police are absent with good cause, such as being in another court of similar jurisdiction or in a superior court. It is JFJ's experience, however, that police officers are quite frequently absent without good reason and this despite having been subpoenaed or otherwise made aware that their attendance was required at court.

Police officers also tend to go on vacation leave for extended period of times and regrettably, some become injured on the job and are then absent for long periods. If they are crucial witnesses the case is then at a standstill until they return and are available to testify.

JFJ has been made to understand that when a police officer is on suspension neither his superior officers nor the Police High Command may exercise any authority over him such as, for example, requiring him to attend court. It has therefore proven difficult for the Coroner's Court to secure the attendance of officers on suspension.

Evidence Not Sent to Court

JFJ has also witnessed investigative bodies not forwarding statements taken from civilian witnesses, resulting in the Coroner not hearing from those witnesses. In the matter of Damion Roache who was fatally shot by one or more JCF officers on November 15, 2002, the PPCA took statements from civilian witnesses but failed to forward them to the Coroner. Although the PPCA says they submitted the statements to the DPP the documents were not before the Coroner. As a result the only evidence heard in the Coroner's Court was police evidence and the jury found that the death was accidental. JFJ filed for Statutory Relief under "insufficient evidence" and asked that the Inquest be overturned based on the fact that the evidence of those witnesses was not heard in Court. The Coroner and the Attorney General consented to the application brought by JFJ when the matter appeared in court on February 20, 2007, and new Inquest will be held.

Finding the Nail – Recommendations for Change

There is no doubt about the need for reforming the Coroner's Court, in regards to both improving administrative function and efficiency and amending the Coroner's Act so it

more accurately supports a justice system that is fair, equitable and accessible for all members of our society. JFJ recommendations for change include:

- More resources and commitment to address the inadequate number of Coroner's Court sessions, magistrates, clerks and support staff;
- Special coroners should be appointed throughout the island to enable the Court to clear the existing backlog;
- Court sessions must convene on a schedule that prevents backlog;
- Court reporters must be assigned to the court to improve efficiency.

The introduction and use of common technology or methods, a relatively minor investment, would go a long way towards increasing the efficiency of the Court. A certified court reporter or stenographer with the proper equipment to record court proceedings would augment the Coroner's hand written notes and provide the freedom to move at a quicker pace. An official court reporter or stenographer would also allow for documentation of directions given by the Coroner to the jury: valuable evidence for the Supreme Court should there be a challenge to the decision of the Coroner;

- Appropriate audio systems must be installed and maintained so that all can be adequately heard without having to continually repeat what was said;
- A nation-wide, public education campaign is needed to inform Jamaicans of the importance of juries and to encourage their participation as jurors.

Citizen juries play a critical role in the delivery of justice in a democratic state. Juries, educated and instructed to judge on matters can provide redress and protection when the state breaches correct processes and administration of justice. When a civilian is summoned as a juror, they should know exactly what is expected of them, what they have to do at court and what compensation or allowances they may receive;

- A nation-wide public education campaign is needed to inform Jamaicans of the importance of witnesses to the delivery of justice and to encourage their participation;

- Witness protection programs must be strengthened to further encourage witnesses to come forward or attend court;
- More stringent methods ought to be adopted in order to punish non-attendance of jurors and witnesses. There is a need to uphold the existing laws as stipulated in the Coroner's Act, which provides a penalty for jurors and witnesses who fail to show;
- The Coroner must utilize his authority to appoint a special bailiff in the event that the person entrusted to serving the subpoena fails to do so within 14 days after the issue of the subpoena;
- Use the current voters list to facilitate the serving of subpoenas to jurors;
- More resources are needed to ensure there are enough adequately trained process servers;
- Superior officers must enforce the participation of investigating officers in ensuring that witnesses are both served subpoenas and appear in court;
- Superior officers must discipline those officers who, though subpoenaed, don't attend court and the Court must start to impose penalties on such officers;
- In cases where police officers are on suspension it would be prudent for the relevant authorities to make available to the Coroner's Court the officers' civilian addresses so that they may be duly summoned by the court;
- Legal aid should be made available for qualifying families with matters before the Coroner's Court;
- Amend the Coroner's Act to allow the Coroner to appoint a fulltime bailiff to serve subpoenas on witnesses and jurors, preferably not a police officer;
- Groups and organizations with extensive experience of the functioning of the courts must be given due respect, voice and consideration regarding any proposed changes to the Coroner's Act; and
- Allocate resources to upgrade the facilities.

The Resident Magistrate's, Supreme Court and Court of Appeal

In Jamaica, the Supreme Court has unlimited jurisdiction in civil and criminal matters and consists of the Chief Justice, a Senior Puisne Judge and at least twenty other Puisne Judges. The three divisions of the Supreme Court are the Revenue Court, Gun Court, and Commercial Court. The Circuit Court is the criminal jurisdiction of the Supreme Court and in the parishes of Kingston and St. Andrew the court is called the Home Circuit Court, while in the parishes the court is named after the parishes, for example, the St. James Circuit Court. The Resident Magistrate's Court is responsible for preliminary Inquiries into criminal matters, among other matters.

JFJ participates in matters brought before the Supreme Court and in preliminary inquiries brought before the Resident Magistrate's Courts where police officers are charged with a murder. We participate by watching proceedings or by obtaining *fiat* to associate with the prosecution. From time to time JFJ also brings applications, usually administrative, to the Supreme Court.

The problems experienced in relation to Supreme Court and Resident Magistrate's Court are similar to those highlighted for the Coroner's Court. JFJ has observed many of the same problems such as: chronic delays; an unmanageable backlog; inadequate system of subpoenaing witnesses and jurors; absence of witnesses; unavailability of jurors; the failure to make use of technology; inadequate number of magistrates, clerks and trained staff; poor public relations; lack of public knowledge of the court system; administrative difficulties; and inadequate physical facilities, to name a few. More specifically, JFJ's observations include:

- **Inadequate Jurors**

The paucity of adequate numbers of jurors to try cases in the Circuit Court is a crucial problem and has resulted in the adjournment of cases in both the Home Circuit Court and Circuit Courts in other parishes. The case of **R. v. Ceceil Wright Anderson and Others**, for example, recently concluded in the Clarendon Circuit Court but was adjourned on about five occasions due to inadequate jurors

and was only able to proceed with an agreement between defense counsel and prosecution not to utilize the requisite number of challenges.

- **Unavailability of Attorneys**

In the Resident Magistrates Court on a number of occasions matters have been unable to proceed due to the relevant Counsel failing to attend as a result of having matters in another court such as in the case of Andrew Wilson (**R. v. Mark Richards** – Spanish Town Resident Magistrate’s Court) or for other reasons and this causes matters to be adjourned in a significant percentage of cases.

- **Backlog of Cases**

Both the Resident Magistrate’s Courts and the Circuit Courts have a tremendous backlog of cases which often results in cases having to be adjourned. The accumulative backlog not only compounds the problem of delays but also becomes particularly problematic when a person is incarcerated pending trial.

- **Absence of judges**

On a significant number of occasions matters in the Resident Magistrate’s Court cannot proceed due to a judge having to assist in other courts or being absent for other reasons, further delaying matters.

- **Absence of Evidence and Files**

JFJ has observed that police officers often fail to take evidence to court, such as in the cases of Janice Allen and Christopher McKenzie. The inability to locate files has also been observed in the Supreme Court, usually in civil matters, where matters cannot begin because the file cannot be found by court staff.

- **Problems of Date Setting**

Preliminary Enquiries in the Resident Magistrates Courts may drag on for months or years, as in the Janice Allen case, because the court is unable or unwilling to set aside sufficient consecutive days to complete the Inquiry and there may be gaps of days to months between the taking of evidence in the matter. This provides its own attendant problems of loss of evidence and intimidation of witnesses as well as simple fall off of witnesses unable or unwilling to return to court day after day.

- **Absence of Witnesses**

The absence of witnesses also contributes to delay in a number of cases. This occurs quite often when the matters concern the charging of police officers. Quite often the police officers responsible for subpoenaing police witnesses fail to serve them as the officers charged are their colleagues. Some police officers do not, unless pressed, make enough of an effort to ensure the attendance of either police or civilian witnesses. In the case of Amanie Wedderburn, Crown Counsel had to report a BSI officer to her superior before real efforts were made at getting the witnesses to attend.

Fear to testify against the police is another of the reasons witnesses often fail to attend court. In a number of cases witnesses reported specific threats by the police as in the matters of Janice Allen (**R. v. Rohan Allen**), Christopher McKenzie (**R. v. Ceceil Wright – Anderson and Others**), and Amanie Wedderburn (**R. v. Vernon Ellis – Westmoreland Circuit Court**).

- **The Improper Conduct of Judges**

The improper and unprofessional conduct of judges in dealing with members of the public, particularly apparent at the Resident Magistrate's Courts, must be of particular importance in looking at a reform of the justice system. The Kimberly Adamou case highlights this problem but it has been noted in several other cases.

The Court of Appeal

The Court of Appeal is the highest local court in Jamaica. Appeals against decisions from both the Supreme Court and the Resident Magistrate's Court are heard in the Court of Appeal. The main problem experienced in the Court of Appeal is the uncertainty as to when and whether a matter will be reached once a date has been assigned. Also of concern is the fact that when applications are scheduled no set time is given, as in the Supreme Court, and one has to wait until their matter is called up.

The time within which judgments are delivered is also a problem and may be attributable to the high volume of cases heard and the small number of judges who sit on this court.

The Janice Allen Appeal was heard in June 2006, but judgment was not delivered until December, 2006.

Supreme Court, Resident Magistrate's Court and Court of Appeal:

Recommendations for Change

Our recommendations for improving the delivery of justice in the Supreme Courts, Resident Magistrate's Courts and the Court of Appeal are similar to our recommendations for the Coroner's Court and include:

- More judges to be appointed to sit as Resident Magistrates and Supreme Court judges;
- More judges to be appointed to sit in the Court of Appeal;
- Increased numbers of clerks and trained court support staff;
- Increased use of technology and official court reporters or stenographers;
- Better case management and scheduling in both the Resident Magistrate's and Supreme Courts;
- Warrants to be sent for witnesses who fail to attend;
- Action to be taken against police officers who fail to serve witnesses;
- Allegation of threats by witnesses to be fully and thoroughly investigated and strong action to be taken against persons who are found to have threatened witnesses;
- More stringent fines for jurors who fail to attend;
- Public education on jury service;
- A specific storage area at the BSI, Office of the DPP or other relevant unit to hold evidence in matters where police are charged with an offence. One specific person should be made accountable for the storage area and pieces of evidence must be signed in and out;
- A witness protection programme which caters specifically to persons testifying against the police;
- A judicial code of conduct addressing, among other things, how judges relate to members of the public and requiring judges to read files beforehand so as to minimize the time spent on a particular case. As part of this code of conduct a

specific mechanism should be set up to receive complaints of breaches of the code, investigate and adjudicate on these complaints and report back to complainants. This mechanism should be widely publicized.

Conclusion

JFJ has called this report *For want of a Nail* because the important lesson that children's poem attempts to teach seems so applicable to the situation in Jamaica's Justice System. When JFJ began monitoring cases in the various courts across the island we knew that there were problems in the system and the likelihood of delays. What we did not expect was that eight years later we would have documented such a litany of shortcomings, inadequacies and problems. All of these shortcomings, inadequacies and problems contribute to the perception (and too often the reality) that the justice system in Jamaica is unable to deliver justice to its people.

Perhaps saddest of all has been the realization that much that needs to be fixed could be done without the expenditure of a single cent (or very little money) and would indeed contribute to significant cost savings in wasted time and effort. As a simple example, the use of the 2005 voters list, rather than the 2002 list, to summon jurors in the Coroner's Court would result in huge savings of wasted time, gasoline and effort lost in searching for jurors who (if the updated list was used) we would know had changed their address. What is needed is proper management of the justice system and accountability of those whose job it is to ensure it is managed efficiently and to ensure "the timely delivery of justice for all."

Jamaicans For Justice is convinced that what needs to be done is known – indeed has been documented over and over again in various reports and studies. JFJ is convinced that we are fully capable of getting it right and that we have the skill and the personnel to do so. JFJ is also convinced that small, relatively inexpensive changes would make huge differences to the problems. What we are not convinced about is whether we have the political will and strength to put it right. We hope to be convinced.