

THE CREATION OF LAWS AND THEIR ACCEPTANCE BY SOCIETY: A CASE STUDY OF THE GUN COURT LEGISLATION, ITS EFFECTS AND IMPLICATIONS FOR THE JAMAICAN SOCIETY

(LA CREACION DE LAS LEYES Y SU ACEPTACION POR LA SOCIEDAD.
UN ESTUDIO DE LA LEGISLACION DEL TRIBUNAL DE ARMAS DE FUEGO,
SUS EFECTOS Y SUS IMPLICACIONES EN LA SOCIEDAD JAMAQUINA.)

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RESUMEN

Este trabajo se refiere a la interacción entre las políticas públicas y la respuesta social que rodea a la legislación contra los delitos con armas de fuego en Jamaica. Se esquematizan las circunstancias que llevan a la toma de decisiones para imponer fuertes sanciones con el fin de disminuir los delitos con armas de fuego y las reacciones sociales que resultan en modificaciones a esas sanciones.

El autor supone que la investigación, estimulada por un cierto grado de inseguridad con respecto a las implicaciones y a la efectividad de la Legislación sobre Armas de Fuego, dieron forma a las políticas gubernamentales; pero que la acción, en lo que respecta a la creación o a la reforma de la ley, está condicionada a los valores e intereses de la autoridad política gobernante.

ABSTRACT

This paper is concerned with the interplay between public policy and societal response which marks the legislation against gun crimes in Jamaica. Circumstances leading to policy decision to impose strong sanctions to deter gun crimes and social reactions resulting in certain modification of those sanctions are outlined.

The author intimates that research, stimulated by a degree of uncertainty with respect to the implications and effectiveness of the Gun Court legislation informed government policy but that action in respect of the creation or reform of the law are conditional on the values and interests of the ruling political authority.

INTRODUCTION

In recent years, many societies - advanced as well as developing - have been experiencing an increase in the incidence of gun violence, as a consequence of the widespread availability of firearms to private citizens. King (1973) argues that there is no necessary correlation between availability and use of firearms; but it is obvious that without guns there can be no crimes; that societies that permit the free circulation of guns among members are very likely to record more cases of gun violence than societies where guns are highly restricted - if only because fewer persons are acquainted with their use.

In Jamaica, the evidence of increased firearms availability, possession and use is striking. In full awareness of, and despite the need for caution in the use of statistical statements, one cannot ignore the situation between 1960 and 1980 in which illegal possession of guns in the corporate area, (Kingston and St. Andrew) reported to the police rose from 8 per 100,000 to 90 per 100,000 in 1977; Breach of Firearms law (all areas) recorded by the police increased from 3 per 100,000 to 40 per 100,000 and Shooting with Intent (all areas) from 2 per 100,000 to 81 per 100,000 in 1979.¹

It is not surprising that here, public attention is focused on firearms control, not only among potential criminals but also among irresponsible private citizens, who hold these weapons illegally, in the interest of self-protection. Successive governments since 1960, exhort, by the offer of amnesty, those persons who are illegal possessors to turn in their guns. The statistics quoted above indicate that over the period, there was not the required response to Government efforts.

FACTORS SURROUNDING THE INTRODUCTION OF THE GUN COURT ACT, 1974.

With 65% of all murder cases involving the use of the gun, and shooting with intent at the rate of 44 per 100,000 of population, gun crimes were said to have reached "crisis proportions" in the 1973-74 period. A graphic summary of the gun-

crime scene which led to the enactment of the legislation in 1974 was given in the judgement of a Government Official as follows:

"It is a matter of general public knowledge that in recent years crimes of violence in which firearms, unlicensed or illegally obtained were used, gave cause for grave public concern and indeed alarm.

The several measures taken over the past six or seven years to control the rising incidence of crimes of this nature have proved unsuccessful. Persons were shot and killed by day and by night in course of robbing, rape and other offences or for no apparent reason. Witnesses for the crown at trials of persons accused for such crimes were often intimidated. Victims of the crimes themselves were not infrequently killed or shot at most probably with a view to their elimination as perpetrators of these crimes. Even counsel for the crown in one case was not immune from attack by the use of a firearm. Intimidation and attack did not come only from the offender. It came also from associates of the offender especially where the offender was a member of a gang."²

"Gun-murder crisis" might refer to an alarming increase in offences involving the use of the gun or it might reflect the type of persons that are at risk as victims or perhaps both. A few months prior to the passing of the Gun Court Act, many prominent members of the Jamaican middle class were attacked and a few shot to death in the course of their duty or at their homes.

There was a climate of near panic among this sector of the society.

Panic or crisis situations attract similar measures for their resolution. Over a week-end, the Government of the day deliberated and came up with swift and harsh measures that would, hopefully, eradicate the menace of the gun from the society of Jamaica. These measures were outlined in the Gun Court Act, 1974.

The Act enlisted, among other sanctions:

1. Abolition of trial by jury;
2. Mandatory sentencing even where no firearm is produced;
3. Indefinite detention subject to recommendations by a Review Board;
4. Guilt by association;
5. Trial in Camera;
6. The classification and treatment of imitation firearms and bullets as "firearms" under the law;
7. No appeal against sentence;

(Gun Court Act, 1974).

Persons arrested on a gun charge were to be tried at the soonest time possible, following arrest.

SOCIETAL REACTION TO THE GUN COURT LEGISLATION.

The consensus of society on the measures set out in the Gun Court Act has never been realized. Members of the middle-classes expressed a sense of relief that something decisive was being done to protect from gun-violence, those who were not able to migrate to other countries in search of relaxation from fear. It was generally expressed among this group that the Gun Court laws had 'saved the day' as gun-violence seemed to have abated for a time. Later, when gun-violence erupted once more, the perceived lack of effectiveness of the Gun Court Legislation was blamed on the position taken by critics whose written and verbal comments were regarded as destructive of governmental efforts.

The urban poor perceived themselves to be at great risk in respect of those clauses of the gun legislation which were regarded as a threat to basic rights and freedoms. The most frequently criticised, and doubtless the most feared clauses were stated as:

Abolition of trial by jury;
Mandatory sentencing even when no firearm is produced.

"Mandatory sentencing..." we seem to be a particularly disturbing clause; members felt that it could encourage abuse by malicious persons in a hostile social environment; that it was unjust, to the extent that there could be conviction for the

possession of an "unseen gun". The idea was expressed that in the absence of a jury, the police would always be given the benefit of the doubt. These fears also occupied the minds of inmates of the Gun Court Rehabilitation Center. Worthy of note too, was the similarity of the criticism of these inmates to those of the professional bodies. In an interview, they stated their major criticisms of the institution as:

- Lack of Jury;
- Lack of discretionary power of judges;
- Mandatory sentencing;
- Likely abuses through Guilt by Association.
- Injustices arising out of the Administration of the Gun Court;
- Delay in holding trials in a reasonably short time after arrest.³

The strongest reaction came from members of the legal and judicial bodies. These professionals openly criticised the Gun Court legislation for its erosion of the constitutional freedoms of the citizens; its usurpation of judicial discretion in relation to the imposition of appropriate sentences; its denial of the right of a convicted person to appeal and the serious abuses, involving malicious acts, with which it could be associated. In a statement to the press, the Jamaica Bar Association expressed resentment of the fact that the Gun Court Act (1974) gave to political ministers and executive officers, wide and far-reaching powers, without specific rules for their exercise.⁴

SOME IMPLICATIONS OF THE GUN COURT LEGISLATION (1974).

Two important overlapping issues might be considered together at this point; they are (i) the perceived precipitating circumstances of the legislation and (ii) the political identity of the legislation.

Critical Criminologists emphasise the need for the ruling class to devise legal instruments to protect itself and its own selfish interests in the name of the public good. This idea lacks appeal among mainstream criminologists in advanced ties, but seem to be of some substance in theori-

zing about less developed countries which are also less well researched. Reports of power struggles in Caribbean territories and other developing Third World societies suggest that empirical evidence for the claim of the critical criminologists might be less subtle in these societies than in the advanced societies.

Gun offences showing steady increases in rates between 1960 and 1973 involved the urban poor as both offender and victim. There were numerous gang episodes as well as individual battles to sort out social, physical and/or political differences; there were many incidents of police-offender gun battles which resulted in death or injury to one or other party. Researchers suggest, however, that in 1973, this familiar pattern was somewhat changed. The middleclass were being attacked and robbed at the point of the gun, at their homes, on their way to work, or at places of entertainment. Gendreau and Surridge (1976) reiterate the generally accepted view that "it was three murders in particular that shocked the nation and placed tremendous pressure on the Government to take immediate action".

The first murder, involving a city businessman as victim, evoked strong reactions from the business sector - the President of the Chamber of Commerce called upon business associates to close their doors, pending drastic action by the police and government. The second and third murders involved Attorneys-at-law, one of whom, allegedly, intimated that there was in existence, a list of prominent persons slated to be shot, and that his name had appeared on such a list. It was evident from such reports and/or rumours that the more powerful class in the Jamaican society was being threatened from below. The reflections of a journalist who recently reviewed the consequences of the Gun Court legislation, is to the point:

Death by violence had moved out of the ghetto, and there can be no question... that all classes across the island were badly shaken by this indication that privilege and wealth were no longer protection to be taken for granted... The ruling class were suddenly having to live with a terror that had hitherto

been reserved for the urban masses.⁵
(John Hearne, Gun Court Consequences.)

The second issue, the political identity of criminal legislation, is also addressed by Critical Criminologists. Turk (1969), Chambliss and Seidman (1971) draw attention to conflict relationships in societies holding plural values and These authors suggest that criminal laws, presumably developed to mediate the antagonisms inherent in these societies, emerge as response to the demands of the more powerful and embody their interests rather than those of the less powerful. Deviance is therefore to be viewed as a political issue and one may well question the assumption that the political authority governs impartially. This point gains currency in the work of Chambliss and Seidman who write:

It is our contention that... the power of the state is itself the principal prize in the perpetual conflict which the various law-making institutions in the bureaucracy that is the State lay down for the governance of officials and citizens... and the bureaucratic agencies which enforce the law -- is in fact a self-serving system to maintain power and privilege (1971:4).

The perception of Chambliss and Seidman that conflict between the political (law-making) institutions and the bureaucratic (law-enforcing) agencies would result in the pursuit, by the latter, of their own organizational needs and interests at the expense of political goal-achievement, is enlightening. Such conflict was observed during the period immediately following the enactment of the Gun Court legislation. The statement issued by the Bar Association of Jamaica condemned the 'objectionable features' of the legislation. Foremost among those features was the usurpation of power by politicians who, as we intimated earlier, were seen to be holding far-reaching powers such as could deny convicted persons of certain constitutional freedoms. Concern with, and anxiety about that issue was borne out by their statements:

We view with concern the wide discretionary and far-reaching arbitrary powers which have been placed in the hand of the Minister of National Secu-

rity and Justice... The right of a convicted person to appeal against sentence in a Court of Appeal in Jamaica has been taken away by the provisions of the Gun Court Act. Any review of the mandatory sentence of indefinite detention is now in the hands of a Review Board... No one knows if legal representation before it will be permitted,

(The Sunday Gleaner, April 21, 1974)

The view was also advanced that the Gun Court legislation, by design, had humiliated the principals of law.

Legal action taken in 1974 on behalf of the first four persons to be sentenced to indefinite detention under the Gun Court Act, challenged the constitutionality of the legislation and exposed the impotence of the local Appeal Court in respect of that situation. A subsequent appeal to the English Privy Council⁶ resulted in certain modifications of the Act: The Review Board which was constituted to scrutinise the sentencing of gun offenders, was declared to be unconstitutional and later abolished; the indefinite detention sentence was substituted by life imprisonment.

THE GUN COURT LEGISLATION AND CRIME CONTROL

The provision of a special place of detention - the Gun Court Rehabilitation Centre - within the terms of the Gun Court legislation was said to be informed by scientifically derived laws of human behaviour. A local Psychiatrist engaged in consultation to the Government, contributed ideas for behaviour modification, gleaned from Learning Theory in Psychology. The striking visibility of the structure that is the Centre, painted red and placed next to the army camp was regarded as a symbolism that should deter would-be gun offenders - "it is red because it is dread" was the expressive sentiment at the time of construction. Did the Gun Court achieve the desired objective - the control of gun crimes?

Comparing raw scores representing the number of cases reported to the police for the periods immediately preceding and following the Gun Court legislation, it would appear that there was a decrease in gun crimes. Gun murders showed a decrease of 50 % from 124 to 62; shooting with intent, a decline of 29 % and armed robbery a decline of 21 %. There was, however, an overall decrease in all types of violent crimes. Comparing

TABLE

Offence	1973-74		1974-75		1977-78	
	Total Reported	Firearms Used	Total Reported	Firearms Used	Total Reported	Firearms Used
Murder	232	124 (53.4%)	195	62 (31.8%)	409	242 (59.17%)
Shooting with Intent	879	879	620	620	1,165	1,165
Robbery	3,225	1,893 (57.8%)	2,387	1,502 (62.9%)	3,511	2,182 (62.14%)
Breach Firearms Law	305		322		801	

Source:

Compiled from Police Statistical Tables of the Department of Correctional Services appearing in the Report of the Advisory Committee of the Ministry of Justice in relation to the Gun Court Legislation (1980), Gendreau and SurrIDGE, Controlling Gun Crimes, The Jamaican Experience (N.D.), and Dudley Allen (Crime Commissioner), "Urban Crime and Violence in Jamaica", in Brana-Shute and Brana-Shute, Crime and Punishment in the Caribbean, 1980:51.

the proportion of Gun crimes to other crimes of violence during the two periods, we find that gun murders which accounted for 53^o/o of all murders in 1973-74 decreased by 21^o/o in 1974-75; armed robbery which accounted for 59^o/o of all robberies reported to the police in 1973-74 stood at 62^o/o in 1974-75 - admittedly a very slight change which was most probably non-significant statistically. The effects of the legislation, if any, were very shortlived as gun crimes resumed and surpassed earlier figures quite substantially by 1977. In 1977, there were 242 as against 62 cases of murder by firearms reported in 1974; the figure for shooting with intent almost doubled (620:1165) and armed robbery increased by 680. Statistics now showed a general increase for these categories, with firearms accounting for 59^o/o of all murders reported.

The earlier widespread concern about gun crimes and fear of gun violence intensified between 1975 and 1980, particularly during the election years 1976 and 1980. A flurry of news reports, letters to the press, editorials, newspapers articles, panic stories in circulation which failed to reach press, generated a very high level of fear for safety. This led to questions about the effectiveness of the gun court and critics called for its abolition. In a letter to the editor of the local newspaper dated March 8, 1979, a well-respected Attorney expressed the currently held view that the Gun Court had never succeeded in incarcerating the real 'gun-man'; that there were more gunmen walking the streets than not. Legal and judicial personnel called for the abolition of certain aspects of the Gun Court, on the grounds that the legislation had failed to achieve the administrative objectives for which it had been established and that it was a monstrous blot on an otherwise impeccable judicial system. Less hostile voices sought reforms on penalties and the restoration of the Judges "unfettered, tested and tried power to fix the appropriate sentence for offenders."⁷

GOVERNMENT POLICY AND RESEARCH

The Government, at this time, appeared to be responsive to the concerns voice. In 1979, the Ministry of Justice commissioned a committee of experts drawn from the Bar Association, Office of the Public Prosecutions, Correctional Services, Department of Statistics and the University of West

Indies to examine the operations of the Gun Court with reference to the implications for local jurisprudence. This move on the part of the political authority was seen by some members of society as response, not to pressures regarding crime control measures, but to the existing economic plight⁸ which necessitated financial cut-backs in Government spending for the maintenance of costly institutions such as the Gun Court, which was, in effect a duplication of the traditionally established court. Others saw a strategy to encourage voter goodwill in elections that were to take place in the following year. Whatever the motive, it might be argued to consider possible changes of policy in respect of legislation was contingent on gains in its own interests.

The exercise of the committee selected by the Government entailed among other things, research into the reactions of the public to the continued presence of the Gun Court. Researchers endeavoured to find out what were the thoughts and feelings of the public with regard to measures for the control of gun crimes; they examined, also, the effects of the legislation, particularly the consequences for young offenders (some at the age of 13/14 years) who had been incarcerated under the Gun Court law.

Research findings on offenders seem to bear out the main thesis of Labelling theorists that "criminal definitions are enforced in the interests of powerful groups by their official representatives" and that a person is "designated a criminal by the reaction of authorities who confer upon him the status of an outcast and divest him of some of his social and political privileges". (Schrag, 1971:81).

It was found that the majority of Gun Court inmates (over 60^o/o) had been convicted without even having seen a gun produced in court as evidence of their criminal activity; some inmates were detained for up to one year, pending trial, on the "flimsiest of evidence"⁹: inmates to be the result of the inability of the police to find substantial evidence for proceeding against them as well as their deliberate delay in the hope of rendering impartial justice through unsympathetic judges; some cases were heard in the absence of legal representation as many offenders could not afford that facility; the assignment of Legal Aid was not always

helpful as some attorneys failed to turn up to represent their clients. These findings are indicative of the ability of the administrative authority to stigmatize and label persons as criminals on the basis of what is hardly more than suspicion.

Of course, it might be argued that no labeling necessarily occurs since the data contained evidence that convicted persons did not internalize legal reactions and certainly did not admit criminal status¹⁰. However, depending on an alleged offender's personal status, who makes the charge that he was seen with a gun and which law-enforcer executes his arrest in a politically divided society, such as Jamaica, a person bearing legal definition as a 'gun-man associate' could be forced to accept, psychologically, a criminal status. Incarcerated without a trial, frustrated through lack of representation, encouraged into criminal associations and embittered through uncertainty and feelings of hopelessness, such a person could develop negative attitudes to society and a perception of self that, in his opinion, justifies criminal behaviour both within the institution and in the world outside, should subsequent long awaited trial result in his release. A profile of inmates of the Gun Court Rehabilitation Center shows a general concern with their curtailed life chances, harsh physical conditions, unjust treatment and a feeling of loneliness and hopelessness.

Research results indicated that despite a high degree of criticisms regarding the effects of the Gun Court in controlling gun crimes, there was substantial public support for its continued presence. It was generally felt that it was an appropriate instrument for dealing with gun crimes, to the extent that it kept *some* gunmen off the streets, and a viable alternative was not conceived; reforms were neither strongly suggested nor supported, through lack of knowledge of administrative procedures and their effects. The legitimacy rather than the effectiveness of the Gun Court legislation, evoked positive response from the society in general.

RECENT POLICY CHANGES

Major changes of aspects of the Gun Court legislation which directly affect persons charged under the firearms law have come about through the instrumentality of the present Minister of Jus-

tice who, prior to holding office, identified with appeals for amendment of the Act. AS a strategically placed member of the now, more powerful political group, this incumbent has proceeded to put into effect, legislation reflecting his own values and interests and those of the groups that he represents both within the political administration and among the electorate. Not only is this member of the political (law-making) authority an attorney-at-law whose status and functions were threatened under the principal Gun Court Act but also, he is reported to be a foundation member of the Jamaican Human Rights Council, a fact which attests his interests in and support for humanitarian values that the harsh sanctions of the Gun Court Act, the creation of an earlier opposing regime, seemed to have challenged.

The amended Act provides for a modification of the Guilt by Association clause of the 1974 Act. The clause stipulated that persons found in the company of illegal possessors of firearms who were presumed to be threatening to the public order and safety, were to be treated as being also in possession of such firearm, unless of course, they could supply reasonable excuses. The problem revolves around what is regarded as 'reasonable excuse' and by whom, in this special, politically constituted court. The amendment stipulates that associates of gun possessors must be present at the scene of the crime perpetrated by the possessor and must be seen to be aiding and abetting the commission of the crime. Recent amendment has also removed mandatory sentences for the illegal possession of firearms, thus returning to the judiciary, discretion in sentencing for gun possession and other firearm offences.

These amendments support and give effect to certain recommendations contained in the *Report of the Advisory Committee of the Ministry of Justice in relation to the Gun Court Legislation, 1980*. which were formulated on the basis of systematic research. However, it might not be claimed that such research brought about or even influenced, directly, the exercise of the present political authority. Research activities supplied needed information regarding how members of society were perceiving the institutional measures for violence-control; what were their attitudes to these measu-

res and what were the conditions of existence of persons convicted and incarcerated in the Gun Court Rehabilitation Center. All this is important and interesting information which, however, is not particularly useful in terms of indicating what should be done about gun crimes or whether less stringent and more just measures might have same or more or less satisfactory results in controlling gun crimes. These questions are obviously, political, necessitating decisions that are instigated or inspired by political values and self-interest. decisions that law creation and reforms reflect.

CONCLUSION

Within the context of the Gun Court legislation, there has been considerable interplay between directives and societal reactions. First, strong reactions from the middle-class - particularly the business and commercial sector - instigated the formulation of severe sanctions to eradicate, quickly, the threat of gun violence that was destroying its privacy, wealth and welfare.

Here the Gun Court legislation demonstrates the anxiety of the powerful to retain its position through the instrumentality of laws designed to serve its purpose, while stigmatizing and incriminating those without power who seem threatening.

Secondly, a reform of some of the conditions of the Gun Court legislations (e.g. the abolition of the Review Board and the substitution of

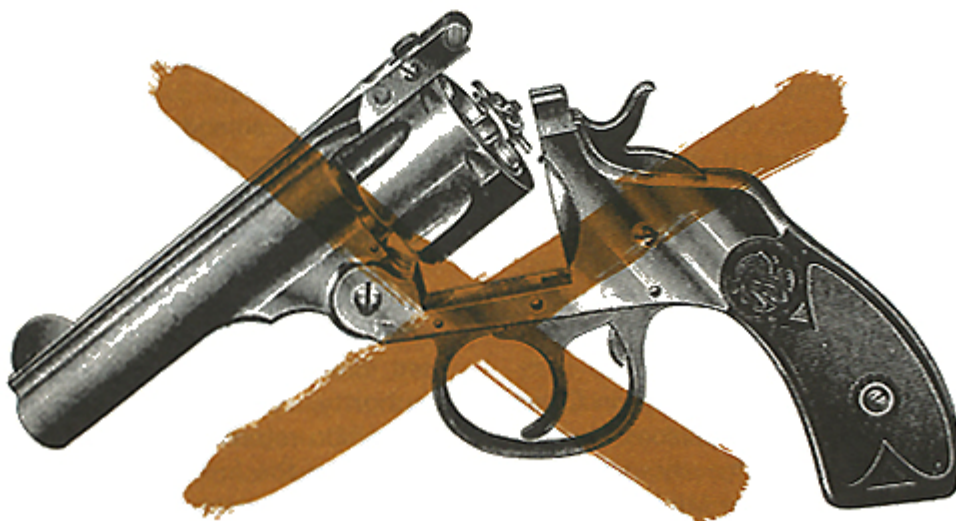
life imprisonment for indefinite detention) followed in the wake of socio-legal pressures. Criticisms and pressures of greatest impact came from among the socially privileged.

Thirdly, considerations of further reform, were guided by an awareness of public vigilance developed through attention to informed opinion and research findings; however, the actual implementation of reform appears to be conditional on the values and interests (personal and/or public) of those occupying politically superior status. The issue of the Gun Court Legislation and its reforms seem more important as an indicator of power relationships served by the legal order than as a debate on the effective strategy for crime control.

On the other hand, legislative policy involving the establishment of the Gun Court has enjoined inquiring minds to examine more closely, the legal and constitutional freedoms that a society, (such as ours) enjoys, as well as the potential for the erosion of such.

Two hypothesis have emerged from this review of the Gun Court legislation:

1. That political predilection and necessity rather than research is the motivating factor underlying the kinds of action taken in respect of crime control;
2. That societal reaction that influences action is the reaction of the socially privileged minority and not that of the less privileged members of the society.



SUMMARY

This overview of the Gun Court legislation and its effects points to the role of informed specialist opinions, research results and general public reactions in directing political attention to the impact of policies designed to deal with gun violence, a major social problem in Jamaica. It is suggested, throughout, that policy decisions and consequent action in respect of this problem depend not so much on pressure from these sources but on the value-orientation of the ruling political authority and its commitment to protect the welfare and/or project the values and interests of the group or groups with which it identifies; that to the extent that policy is influenced, it is the reaction of the more powerful rather than the less socially powerful that commands attention and consideration.

FOOTNOTES

1. Statistics for 1979-80 are somewhat reflecting pre-election disorder and political violence; reported decline in crime rates since 1981 is concomitant with a quieter political climate.
2. Statement of the President of the Court of Appeal, quoted in the Report of the Advisory Committee of the Ministry of Justice in relation to the Gun Court Legislation, 1980.
3. Research data on Attitudes to the Gun Court, collected in 1979.
4. The Sunday Gleaner, April 21, 1974. The Gleaner is the major Official Newspaper of
5. Article by John Hearne, The Gun Court Consequences, The Daily Gleaner, November 7, 1982.
6. As member of the British Commonwealth of Nations, Jamaica recognises the Privy Council of England as its highest Court of Appeal..
7. The Daily Gleaner, October 23, 1979.
8. During the ten-year period from 1970-1980, Jamaica experienced severe economic decline, necessitating heavy reliance on the International Monetary Fund in order to facilitate Government spending.
9. Report of the Advisory Committee of the Ministry of Justice in relation to the Gun Court Legislation.
10. Research into Attitudes to the Gun Court, op. cit.

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