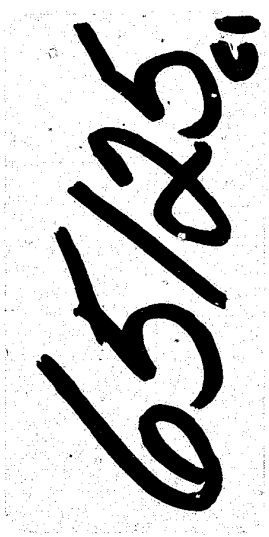

CRIME COMMISSION OF GREATER MIAMI

JUVENILE COURT REPORT

FAMILY DIVISION, JUVENILE SECTION

11th JUDICIAL CIRCUIT COURT

65125

A FOUR MONTH STUDY CONDUCTED BY CRIME COMMISSION VOLUNTEER COURT AIDES OF THE OPERATIONS OF THE ABOVE COURT, INCLUDING OBSERVATIONS AND RECOMMENDED CHANGES

DIRECTOR OF VICTIM WITNESS PROJECT - NANCY TRAAD

CHAIRMAN OF JUVENILE COURT PROJECT - WILLIAM GALLNER

INTRODUCTORY STATEMENT

The Crime Commission of Greater Miami, through the leadership of Nancy Traad, inaugurated a Juvenile Court Project for the purpose of studying that court, and all allied agencies working for and with the court. The program got underway in the middle of September commencing with one volunteer Court Aide, a retired New Jersey Judge who had seen considerable service in the Juvenile Courts, as well as the Criminal Courts. The project, with only one observer expanded within two weeks, and a committee was formed, adding four retired attorneys for a total of five, to which was then added three lay persons as aides and observers. By the middle of October, the staff consisted of eight observers working throughout the Juvenile Court system.

This report is based upon their observation of the four Juvenile Judges presently sitting in Juvenile Court and interviews with State Attorneys, Public Defenders, Intake Counsellors, Field Counsellors, Judges, and various Police Officers. The interviews were addressed primarially to factual situations observed in the courtrooms. It should be noted that the minimal personnel available in making the survey limited the time for fact-gathering to court coverage on Mondays, Tuesdays, and Fridays, with an effort to cover all of the judges. The statistical table, which will appear at a later point in this report, indicates the limitations. However, interviews do support the contention that that which the sampling displays is in reality a fair representation of what the samplings disclosed.

It should be noted in support of this project that the time and effort already expended, and which will be expended, is more than justified when we bear in mind that the Juvenile offender constitutes the boot camp for the future armies of criminals about which we have so long been deeply concerned. It is particularly important at this time, when more than fifty percent of the crimes are being committed by juveniles, that we dedicate ourselves to correcting the inefficiencies and unproductive time loss too prevalent in our Juvenile Courts.

We cannot stress too strongly the need for volunteer intervention in the Juvenile System to correct what needs to be corrected, but which unfortunately continues to exist because those closest to the Juvenile Division have become enmeshed in fixed patterns which frustrate the basic fundamentals.

Some of the observations which the committee feels have a direct and traumatic impact upon the ultimate goals of the Juvenile Court and the various Social Agencies attached to the Court are:

CALENDARING

A lack of central and systematic calendaring of cases is one of the causes of delay, inefficient operation of the courts, and oft-times, the dismissal of cases because of the speedy trial rule. This has been noted in many instances.

Companion cases are often not brought into court at the same time, thus necessitating the duplication of hearings.

The disposition of domestic matters are calendared before the same Judge on the same day as juvenile matters. This causes congestion, delay, long waiting between cases, and loss of principal persons who have become tired of waiting.

Whatever the method of calendaring, the net result has been that oft-times attorneys, case workers, and other attached personnel are not prepared, and postponments are much too frequent.

WITNESSES FAILING TO APPEAR FOR TRIAL

There are many and varied causes for this deficiency in the system. Cases are not properly prepared and prosecuted, resulting in the failure of either the State, the Defense, or Youth Services to issue subpoenas to witnesses; discouraged witnesses feel harassed because they have come to Court on several occasions only to have the case postponed, or having already been at Court for the purpose of giving a deposition. (This will be discussed under a separate heading.)

POLICE OFFICERS NOT APPEARING FOR TRIAL

This is caused by either the trial being set without clearing with the Police concerning their availability, or an officer was away on vacation, or there was a conflict of dates, or in some instances, out-right neglect on the part of the Officer himself. There were instances where the State Attorney announced to the Court that the officer would not appear, and had, just that morning, called the State Attorney to inform the State that it really had no case. (A fact which should have been determined at arrest, or at intake, or if not then, by a State Attorney reviewing the file when preparing for trial.)

STATE NOT READY FOR TRIAL

The reasons given to the Court for this statement are varied and rarely valid. There is no excuse for not being prepared, since most of the cases are rather simple and not at all complicated either as to the facts or as to the law. Another reason assigned for lack of readiness

is the unavailability of a witness or witnesses, and in several observed instances, the failure of a Field Counsellor or other responsible person seeing to it that the Juvenile is in court.

PUBLIC DEFENDER NOT PREPARED

The Public Defender has little difficulty in seeking and obtaining a continuance since he represents the Juvenile, and our system is geared to the Defendant. Frequently the reasons given for seeking the continuance are either not valid or they should not have occured, to wit: the attorney has not had an opportunity to talk to the defendant prior to trial; prior offenses or subsequent offenses with which the juvenile is charged are pending; there is no file in on them as yet; the Public Defender, on the day of trial, might discover that there are several defendants assigned to the office, and cause a conflict of interest; the trial must be delayed to appoint counsel for the co-defendants; etc.

At times, even though the case may eventually go to trial, or a plea entered on the day scheduled, there is nevertheless a long hiatus between cases when the Judge sits in Court and waits while the Public Defender talks to witnesses and defendant for the first time, or for the first time, plea negotiations take place between the State and the Defense, even though the Public Defender's office and State Attorney's office are next door to each other.

LACK OF COOPERATION BETWEEN STATE AND DEFENSE

While philosophically, juvenile proceedings and the appearance of counsel therein have some adversary aspects, nevertheless, both sides are guilty of gamemanship, rather than advocacy. Neither side will stipulate facts needing no proof, such as ownership of property, value of property, and other kindred procedural matters. As a result,

the trials are not juvenile hearings, but actual junior criminal trials, and regrettably, resemble more a law school moot court conducted by students than the mature trial of a juvenile with the important balancing of the rights of society and the juvenile as a major concern. The end result is the excessive consumption of time in the trial of cases irrespective of the gravity of the offense.

DELAYING TACTICS

This is best exemplified by the obvious tactics of the defense attorneys, primarily those in the Public Defender's office, (who handle about 99 percent of the case load) entering not guilty pleas automatically for the purpose of "buying time." Observable and manifest is the entry of not guilty pleas because the Public Defender has not yet aquainted himself with the facts of the case. Surfacely, this may not appear to be too serious. However, a studied analysis of this tactic will inescapebly indicate that the entry of a not guilty plea on behalf of a child who committed the offense, and knows he did, goes to the very moral fiber of the child's behavior pattern. In fact, and oft-times, the attorney's attitudes in the presence of juveniles engenders a "beat the rap" syndrome and neutralizes our traditional concept of the obligation to "tell the truth." This is a situation that is legally and morally unacceptable, and may go to the very core of the juvenile system. Much too often, the Constitution is saved and the child is lost.

DEPOSITIONS

Depositions cost approximately $2.98 a page, and $30.00 for the attendance of the stenographer. It has been noted that there are some

Public Defenders who take depositions in every case from trespass to homocide. The Crime Commission committee is presently seeking to ascertain the cost to the taxpayers for this device. It creates the evil of delay and hidden costs, such as witnesses losing time from work, witnesses becoming frustrated by what they consider harassment, and the actual cost for overtime for police officers brought in for depositions. The taking of depositions has been excluded from the liberal discovery proceedings suggested by the American Bar Association, and in the entire draft on discovery by the A.B.A., there is no mention of the taking of depositions as a means for discovery. In fact, the Federal Court and most States do not take depositions in Criminal Cases. The open file of the Prosecuter's office which can be examined by the Defense, and which contains, or should contain all police reports, statements by witnesses, and any other pertinent material is and has been announced by the A.B.A. as adequate for the preparation of a defense. The prime purpose of pre-trial depositions is to impeach the credibility of a witness at trial, and, as admitted by a member of the Public Defender's staff, are primarily used to impress a jury. Case by case observation reveals that the depositions are rarely, if ever, used in court. Yet, the taking of them absorbs the time of witnesses, Public Defenders, Police, and a member of the State Attorney's office who must be present. It is admitted that the depositions are taken for the purpose of preparation, (available through open discovery), and it is not vigorously denied that depositions also can delay trial and may have a sobering effect on witnesses who must return again and again at the whim of the system. It has been observed that depositions have been taken even though there is an

eventual plea of guilty, and have also been taken in the type of cases that result in nothing more than a reprimand or some type of non-custodial supervision. Public Defenders contended during an interview that the depositions are needed to apprise Defense Counsel of what the State has against the juvenile. This is neither true nor valid since all of the material needed for adequate preparation is contained in the Prosecuters file, which is made available to the Public Defender without the necessity of a motion to produce.

GENERAL

It is apparent that delay, dismissals, crowded calendars, duplicity of proceedings, and a general breakdown in the juvenile process is brought about by a lack of communication between various departments, Social Service Agencies, unpreparedness, and game-playing between the State and Defense, where wins and losses and score cards become more important than results which are best for the juvenile, as well as society in general. A typical court day is laced with scurrying lawyers, misplaced files, late realization that attorneys did not get the file from a clerk, and all of this while the Judge sits and waits. Utter confusion is rampant. We find a deficiency when a defendant with more than one charge has several cases listed before several Judges. This distroys the opportunity for one Judge to evaluate the totality of the child's problem, which is contra-productive to the alleviation of the problem.

SUGGESTED REMEDIES

The following constitutes some suggestions respectfully submitted by the committee without the committee advocating any particular one

or group of remedies. The suggestions are advanced for the purpose of launching studies by volunteers to the Crime Commission, and in fact, hopefully, to enlist the aid of law students to research, analyze, discuss, and make a comprehensive feasibility study addressed to the points contained herein. A dual purpose may be served here by offering law students much needed training in the field of juvenile law.

1. A more comprehensive school program geared to truancy, offenses committed against the school. Judge Gelber, in a recent survey published by him, indicates that many offenses are committed on truancy days, or days when the child is absent from school. It is suggested that schools should be required to report truancy within one or two hours after school opens so that the police can be alerted, and the child can be picked up and returned to school. There is no apparent constitutional prohibition against holding that child in a special classroom properly supervised. In fact, it is recommended that children should be held in a special classroom or some structured supervised area, rather than being suspended from the regular class. Stronger school discipline is advocated so that offenses in school can be handled at that level.
2. A greater diversion of petty offenses is recommended, and in this area, the Crime Commission can do yeoman service in setting up volunteer Juvenile Conference Committees that can take juveniles directly from the police or from intake officers and work with these juveniles on a non-judicial, but consent basis. This could include such offenses as fighting, taking a car without the owners permission, petty larcenies, bike stealing, shoplifting, trespass,

foul and abusive language, destruction of property, and myriads of other misdemeanors which could be handled outside the judicial process in instances of first offense. A complete brochure on the Juvenile Conference Committee System can be made available to the Crime Commission, or to anyone assigned by the Commission, to study the feasibility of this system.

3. A study of the possibility of the elimination of State and Defense attorneys in the trial of those offenses wherein incarceration is not a prospect. Hearings can be divided into informal (no attorneys, no incarceration) and formal (requiring counsel and all other constitutional guarantees provided for by the United States Supreme Court.) It is suggested that this question be submitted to the law schools, and your committee is satisfied that research will indicate that neither the Gault case, or the Kent case, or any other of the United States Supreme Court decisions, require the appointment of counsel in cases not resulting in "coercive measures." This concept is at least inferentially suggested by Florida Rules of Juvenile Procedure 8.130 (3) (IV-4), which suggest that a pre-adjudicatory plan can be submitted before the Court.
4. The abolition of depositions by a simple amendment to the Juvenile Court Rules. This does not require legislative action.
5. The assignment of multiple cases to a single intake officer. It should be here parenthetically noted that investigation discloses that several defendants end up in several intake offices, resulting in a disparity in the filing of cases with the State Attorney, both as to the actual filing itself, and the time of the filing. This results in the lack of coordinating co-defendant matters.

6. Dockets should reflect if a child is being held in Youth Hall, and the target date under the Speedy Trial Rule.

7. Soundings and Detention hearings should be held at the same time.

8. The assignment of counsel upon intake without the necessity of a Sounding. (See Rule 8.290 (2) of Florida Rules of Juvenile Procedure.) This should be done by the intake officer if he elects to file the case with the State Attorney, and may be subsequently endorsed by Court order if required. Observation indicates that on the day of the Sounding, despite the fact that it's purpose is to appoint counsel and/or take a plea, the Public Defender has already injected himself or herself in the case and knows something about it. The first contact is usually on the day of the Sounding, in spite of the fact that the case may have been around for quite some time. It is during that span of time that the Public Defender could be prepared to dispose of the case on the date set by having completed his discovery (not depositions) before the due date. On the due date, the Public Defender should know if there will be a plea of guilty or not guilty.

   This, of course, is provided there is a Public Defender in the case at all. (See number three supra.)

9. Intake officers can be released to perform their various functions by not being required in court, except at a detention hearing or a disposition hearing. This also includes Field Counsellors.

10. It is suggested that an in-depth study be made of the reasons for the lack of liaison between the various departments within H.R.S.

11. The restoration of the sentencing power to the Judges who presently have no statutory power to go beyond the committment of a child to Youth Services.

12. A more comprehensive witness calling program. Interviews indicate that witness calling is now done by interns. However, the repeated incidents of witnesses not appearing indicates a more comprehensive effort in this department. The Crime Commission could offer the same services in the juvenile division as is now being performed in the adult criminal court.

13. Release from probation can be by order on written conclusions by the Youth Counsellor, thus avoiding court time. Such reports should not be made if there are pending cases.

14. The Juvenile Court is a sensitive area in our socio-legal structure. Both the State and the Defense should be represented by experienced attorneys. This area should not be used as a training ground for interns or newly admitted lawyers.

CONCLUSION

The following table is a sampling of 91 cases, and demonstrates some of the observations made by the committee. Of 91 cases, the following represents postponements and dismissals and their causes.

	Postponed	Dismissals
Witness did not appear	1	1
Victim did not appear	2	1
Private attorney did not appear	2	
Police officer did not appear	4	1
State not ready	5	3
Defense not ready	2	
At deposition, plan not ready	6	
Parent did not appear	3	
Acquitted for insufficient evidence		5

	Postponed	Dismissals
Child did not appear	5	
Deposition not yet taken	2	
Speedy trial ran		3
Summons not served in time	3	
Companion cases got separated	1	
Conference while judge waited	5	

The committee stands ready to continue with this survey and observation, and report back any changes that might occur either for the better or the worse, or if any action is taken, survey the impact that such action may have on the system. In addition thereto, your chairman volunteers to meet with any group of law students, lawyers, or concerned lay persons, as well as any committee or committees which may possibly grow out of this report under the auspices of the Crime Commission for the purpose of discussions, input, or merely to answer questions. It is believed by the committee that if the system continues to function as it presently does, there can be no diminution of juvenile crime. In fact, the frailties observed may well be a breeding ground for an increase in juvenile offenses. It should be here noted that this committee has not involved itself in those matters concerning Juveniles in need of supervision for offenses which, if they were adults, would not be a violation of law (incorrigibles, runaways, truants, etc.), nor has the committee been involved in dependency matters, although it is suggested that the many juvenile delinquents are graduates from dependency or non-criminal infraction status.

Respectfully submitted,

Judge William Gallner, Chairman

Juvenile Court Committee

Ben Charles Asher

William L. Abrams

Barnett Mazow

Manuel Sidkoff

Louise G. Coakley

Eduardo R. Garcia

Andrew Corsetti