

“Court in the Act”

A newsletter co-ordinated by the Principal Youth Court Judge for the Youth Justice Community

Merry Christmas from the Office of the Principal Youth Court Judge

Youth Justice in 2007 — Thanks for your contribution

“... would there were no age between ten and three and twenty or that youth would sleep out the rest; for there is nothing in the between but getting wenches with child, wronging the ancients, stealing, fighting...”

Shakespeare, The Winter's Tale, Act 3, scene 3

Writing about four hundred years ago, Shakespeare had it right. Youth and youth offending have been a challenge for every generation. That is not to say that youth offending should not be taken seriously. It is never acceptable and we should adopt a “zero tolerance” approach. But it is a reminder that there has never been a so-called “golden age” of the past, when youth offending was not a challenge.

Shakespeare's comments also encourage balance. Youth offending is not “skyrocketing out of control”. Overall, the rate of Police apprehensions of under 17 year olds **decreased** last year!. What is concerning is the rise in the rate of apprehensions for violent offending, particularly

serious violent offending. This trend is typical for every age cohort of the population – apart from 10 – 13 year olds. For this important group, (it is the flow into the Youth Court), apprehension rates for violence decreased.

There will be much to challenge us next year. We need much better information on the rates of violent offending, any regional differences, and what lies beneath. Youth justice next year will inevitably become more of a political football. It is easy to make glib, superficial and unbalanced assessments of the youth justice system. The youth justice system exists, by statute, to hold young offenders to account and to prevent them re-offending. This must remain our key focus.

In this last edition of “Court in the Act” for 2008, can I pay tribute to you all. Over a thousand people receive “Court in the Act”. They range from police youth aid personnel, youth justice family group conference co-ordinators, youth justice social workers, court staff, youth advocates, and a huge range of government and non-government community-based agencies. These agencies exist in the health, education, drug and alcohol, youth work, mentoring fields, and so many others. Thank you all for your help. Thank you for your dedication and professional commitment to addressing youth offending. As I travel the country I see your efforts, often unrecognised and unsung. Your hard work is humbling.

This year I have travelled to Youth Justice conferences in both San Francisco and Singapore. I am more convinced than ever, that our youth justice system is world-leading. What we do stacks up very well against other countries. Of course there is room for significant improvement. I hope next year we can look more closely at the use of lay advocates, we can get better information about the success rate of supervision with residence, we can develop much greater use of supervision with activity, and health and education assessments can become a more common feature of the Youth Court. There is also an important public debate to be had regarding the inclusion of 17 year olds in the youth justice system. There is much work ahead of us.

Can I wish you all a very relaxing, restful and well-deserved Christmas and New Year break.

Andrew Becroft
Principal Youth Court Judge

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“We cannot always build the future for our youth, but we can build our youth for the future”
Franklin D Roosevelt

NCJFCJ Conference, San Francisco, California July 22-25 2007

In July this year Judge Becroft and Judge Fitzgerald attended the National Council of Juvenile and Family Court Judges Conference in San Francisco. Following is a report of the conference by Judge Tony Fitzgerald.

Ten Lessons Learned and Impressions Gained

1. This interesting and worthwhile conference brought together (mostly) judges, but also other diverse professionals involved in juvenile and family court work throughout the United States. A positive, challenging, mood was set from the outset by Andrew Becroft's excellent keynote address. In addition to the conference sessions, an exhibition hall was in operation throughout, with 36 stalls providing exhibits and information on a wide variety of largely social service agencies that provide a range of assessment and treatment options and facilities.
2. What soon became apparent from the conference sessions, and the breaks for 'networking' in the exhibits hall, was that the issues confronting, challenging and concerning those working in the area of young people in trouble with the law, and involved in the Family Court system in the United States, are much the same as those we have here. The essential philosophies behind attempts to address such issues are much the same too.
3. A number of States have adopted a type of "FGC" approach to addressing youth justice issues and problem solving. Some have also developed effective approaches to preparing plans aimed at addressing both the deeds and the needs of young people who come before the Court. A useful session on system-involved youth included suggestions as to the preparation of plans that address all of a young person's essential needs - "heart, mind, body and soul" - and ensure that effective, comprehensive programs are provided and tailor made for the young person's particular circumstances.
4. In the States, there is a wealth of research and statistics regarding the issues referred to in paragraph 2 above, and a wide variety of initiatives to tackle them. A high volume of research and data comes out of universities there that undertake studies on a wide range of subjects. Also, the Office of Juvenile Justice and Delinquency Prevention ("OJJDP") was established in 1974 and sponsors an array of research, programme and training initiatives to improve the juvenile justice system as a whole as well as to benefit individual youth serving agencies.
5. The size and population of the United States is huge and the approach taken to addressing Youth Court and Family Court issues by each of the states varies, as does the jurisdiction; for instance, the ages of the children and young people brought before the Court. Listening to the issues and challenges faced throughout the States, I appreciated how fortunate we are not to have different State laws and Federal laws to grapple with and all the complexity which comes with that - and I also better appreciated the potential of the legislation and circumstances we operate under. The impression I had was that the bureaucratic and administrative challenges we face are far less complex than those our counterparts face in the States. Even so, what they show is "where there's a will there's a way".
6. Problem-solving Courts started in the United States in the early 1990s and the concept has continued to develop there, based on the recognized advantages of applying the principles of therapeutic jurisprudence to many areas of need that result in people coming before the Court for offences. As well as Drug Courts, a whole variety of these problem-solving Courts have been established including Mental Health Courts, Truancy Courts, Peer/Teen Courts, Girls Courts and more. It would be safe to say that the presenting concerns for the young people coming into these Courts are very similar, regardless of what the Court is called, or what it's primary focus is. (ie; most young people in drug Courts, for example, are also truants and many have mental health disorders - and so on. Most have a dual or multi diagnosis). It seems the nature of the focus, and/or the entry criteria, have to do with such things as targeting issues identified as important in the particular area where the Court is set up - and is also a method of controlling the numbers in these Courts.
7. Of special interest to me was the session on the Mental Health Court which has been operating in Santa Clara County, California, for about 6 years. The Court is known as "CITA" - the Court for the Individualized Treatment of Adolescents. Although entry to the Court is restricted to only young people with a serious, diagnosed mental illness, it was otherwise very similar in set up and philosophy to the IMG Court now operating in Auckland. It was encouraging to learn that, after 6 years of operation, the Court is running well, has proved to be cost effective and has seen significantly lower rates of recidivism.
8. The phenomenon of girls appearing before the Courts, in steadily bigger numbers, increasingly for violent offending, plus the challenge of engaging them in the process, is well recognized in the States. Their presentation and issues are different to boys, requiring different approaches and skills. For example girls abscond from placements far more often than boys and the approach to "containment" needs to recognize the factors causing that. Building trust and rapport patiently and by small steps, working with and building on

70th annual conference of the National Council of Juvenile and Family Court Judges, cont...

the survival skills many will have developed (of necessity), creating strategies to engage them in the process and therapy required are things to be worked on – as well as eliminating gender bias in Court documents and processes, providing ongoing education about such matters and engaging professionals with the necessary skills.

9. As here, truancy from school is identified as a major issue of concern leading to offending. Troubling statistics include 25% of all expelled youth will be in youth corrections within one year; truants are 2 to 8 times more likely to start marijuana use compared to non-truant or suspended youth or low academic performing youth; the onset of serious property offending is 21.53 times as likely with a chronic truant (ie more than 9 days absent); the onset of serious assault crimes are 12.15 times as likely with a chronic truant (more than 9 days absent). The National Centre for School Engagement has been established to promote truancy prevention and school success, improve teachers' skills with homeless and highly mobile youth and provide training, evaluation and technical assistance.
10. Peer Courts operate in some parts of the States. A young person who does not dispute a charge (within a category of certain non-serious offences) may take part

in the process with parental consent. The Peer Court decides punishment only. The prosecutor, defense counsel, clerk, jury bailiff and sometimes judge (sitting with a "real" judge) are all young people and peers of the youth appearing in Court. The attractions and benefits are said to include the Court serving as a prevention and early intervention program; offering a way to hold youth accountable; provide a meaningful forum for youth to build competencies and practice and enhance skills; offer an avenue for youth to provide service for and build ties to their communities and "youth empowerment". The type of offending dealt with by such Courts would normally be dealt with in this country by some sort of diversionary action by Youth Aid. Given that, I would not see such Courts being of great use here as a means of dealing with youth offending. My impression was that these Courts were as much about the involvement and education of the peers who participate in the various roles in the Court, as about the offender.

11. If anyone has any questions about these issues, or more information about them and/or the conference generally, I would be happy to try and help.

Judge A J FitzGerald

Youth and Family Court Judge, Auckland District Court

Reparation scheme successful in Wandsworth

Source: Wandsworth Youth offending Team, Reparation newsletter. Issue No.1 September 2007

Young offenders in Wandsworth in the UK are given a chance to 'repair' the damage when they get into trouble.

The Wandsworth Youth Offending Team (YOT) has several schemes that enable young offenders to put something back into the community. Reparation coordinator, Paul Howard has developed links with a number of community organisations and institutions in the area. One successful scheme is a bike renovation project. Young people, working with a qualified bike mechanic, are taught how to strip, clean and rebuild unclaimed, stolen bikes, which have been donated to the scheme by police. Once repaired, the bikes are given to individuals who have had their bikes stolen.

The young people involved not only learn how to fix the bikes properly, they are encouraged to meet the recipients who have been victims of crime.

One victim said, " It made a huge difference to me to have a positive outcome to what is a very negative experience of

having one's bike stolen."

The bike project won the Youth Justice Alliance Award from the Home Office for its work with victim support.



A victim of bike theft receives a bike from Paul Howard (now working for CYFS in the Wellington area).

Outcomes of project to date: 2006-2007

- 31 young people have been referred to the project so far
- 25 young people have completed 362 hours on the project
- 3 young people (9%) have failed to complete their hours

- 32 bikes have been reconditioned and given to victims of bike crime
- 1 young person has received the Wandsworth Young People's Award for work on this project
- 1 young person has been identified as having the potential to become a highly able mechanic, and may be able to access a CYTEC course (industry qualification)

On the following pages we have included a breakdown of apprehension statistics for 10-13 year olds. This police apprehension data show that the most common offence for this age group is clearly theft at 39.49% (Table 1).

Table 2 shows police apprehensions of 10 to 13 year olds for purely indictable offences. In this category, arson is the most common offence at 70.98%.

Important note:

1. The figures relate to the number of charges, **NOT** the number of 10-13 year olds.
2. They show raw numbers **ONLY** and are not rates of apprehensions, ie adjusted for population growth, which are a far more accurate picture of trends.

Table 1 Number of Police apprehensions of 10 to 13 year olds for non-traffic offences, by offence type, 1997 to 2006

Offence type	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	10 years total	%
Murder	0	0	0	0	1	0	0	0	0	0	1	0.00%
Attempted murder	0	1	0	0	0	0	0	1	0	0	2	0.00%
Kidnapping/ abduction	4	0	6	5	1	1	1	1	3	0	22	0.02%
Rape	6	2	4	6	1	13	5	5	6	3	51	0.05%
Unlawful sexual connection	14	3	5	7	6	105	14	17	16	15	202	0.19%
Attempted Sexual Violation	0	4	1	0	1	3	1	4	0	3	17	0.02%
Indecent assault	25	15	17	30	27	64	31	57	29	22	317	0.30%
Aggravated bur- glary	1	5	2	3	4	2	3	0	1	0	21	0.02%
Aggravated rob- bery	42	49	36	40	34	41	41	28	56	29	396	0.38%
Robbery	37	33	29	37	40	18	32	65	29	34	354	0.34%
Grievous assault	31	23	23	53	39	45	33	41	51	43	382	0.36%
Serious assault	131	115	116	132	129	117	139	141	138	141	1299	1.24%
Male assaults fe- male	9	8	8	10	17	7	10	22	11	4	106	0.10%
Assault on a child	11	10	6	6	3	4	2	8	2	4	56	0.05%
Minor assault	533	438	498	573	555	547	467	555	449	360	4975	4.73%

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Table 1 Number of Police apprehensions of 10 to 13 year olds for non-traffic offences, by offence type, 1997 to 2006

Offence type	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	10 years total	%
Threatening to kill/ do GBH	15	9	16	19	19	32	21	20	22	36	209	0.20%
Cruelty to a child	0	0	0	0	0	0	1	0	0	0	1	0.00%
Other violence	13	2	4	4	14	13	8	5	9	25	97	0.09%
Non-violent	18	11	7	10	10	16	23	30	14	19	158	0.15%
sexual												
Obstruct/resist	8	9	9	13	10	3	8	9	12	12	93	0.09%
Intimidation	90	62	78	85	118	99	124	88	105	116	965	0.92%
Other against person	31	33	26	127	28	21	25	23	22	21	357	0.34%
Burglary	1325	1131	1154	1593	1142	1076	1161	917	989	926	11414	10.85%
Theft	4904	4134	4997	4861	4284	4262	4306	3944	3093	2740	41525	39.49%
Receiving stolen goods	151	102	76	98	99	99	70	70	63	55	883	0.84%
Motor vehicle conversion	296	252	206	240	244	216	298	197	207	183	2339	2.22%
Fraud	151	68	92	108	100	148	70	74	54	66	931	0.89%
Arson	226	195	235	277	296	233	287	208	219	197	2373	2.26%
Wilful damage	1374	1153	1366	1598	1494	1378	1365	1291	1225	1313	13557	12.89%
Other property	506	511	473	360	351	504	561	305	345	255	4171	3.97%
Use cannabis	187	138	202	293	293	293	223	183	177	153	2142	2.04%
Deal in cannabis	24	31	20	34	19	22	13	13	16	9	201	0.19%
Other cannabis	11	18	21	25	25	23	27	20	20	11	201	0.19%
Use other drug	2	0	5	4	3	5	6	1	2	0	28	0.03%
Deal in other drug	0	1	4	6	3	11	4	0	2	4	35	0.03%
Other drug	0	1	0	1	2	4	5	0	3	1	17	0.02%
Breach periodic detention	0	1	0	0	0	0	0	0	0	0	1	0.00%
Breach supervision	0	0	0	0	0	1	0	0	0	0	1	0.00%
Failure to answer bail	0	3	1	0	0	1	0	0	0	0	5	0.00%

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Table 1 Number of Police apprehensions of 10 to 13 year olds for non-traffic offences, by offence type, 1997 to 2006

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Offence type	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	10 years	%
Breach of protection/non-molestation order	0	0	0	0	0	0	2	0	0	0	2	0.00%
Escape custody	3	3	4	10	2	5	11	10	4	4	56	0.05%
Obstruct/pervert course of justice	0	1	0	0	2	1	0	0	0	0	4	0.00%
Other against justice	35	23	26	30	41	37	24	30	21	24	291	0.28%
Unlawful assembly	0	0	0	0	0	0	0	2	1	1	4	0.00%
Possess offensive weapon	131	123	86	96	122	110	142	84	114	140	1148	1.09%
Offensive language	43	33	56	73	35	45	68	35	31	25	444	0.42%
Disorderly behaviour	764	517	585	764	694	646	699	569	464	440	6142	5.84%
Trespassing	371	390	373	445	508	531	444	433	375	327	4197	3.99%
Other good order	33	16	8	7	12	26	11	12	13	8	146	0.14%
Arms Act	143	115	145	126	91	105	101	136	124	80	1166	1.11%
Dog Control Act	1	2	0	4	2	0	0	2	0	0	11	0.01%
Liquor-related	25	30	17	45	25	33	21	6	11	14	227	0.22%
Other miscellaneous	111	121	121	150	179	164	388	80	76	27	1417	1.35%
Total	11836	9945	11164	12408	11125	11130	11296	9742	8624	7890	105160	100.00%

Notes

1. The data used to produce this table were sourced from New Zealand Police. Offences were grouped using the Ministry of Justice classification rather than the Police classification.
2. Age is at the date of apprehension
3. Date when apprehension was made has been used to determine year.

Table 2. Number of Police apprehensions of 10-13 year olds for “purely indictable” offences, by offence type, 1997 to 2006

Offence type	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	10 years total	%
Murder	0	0	0	0	1	0	0	0	0	0	1	0.03%
Attempted murder	0	1	0	0	0	0	0	1	0	0	2	0.06%
Kidnap-ping/abduction	0	0	1	0	0	0	1	0	0	0	2	0.06%
Rape	6	2	4	6	1	13	5	5	6	3	51	1.54%
Unlawful sexual connection	14	3	5	7	6	105	14	17	16	15	202	6.11%
Attempted sexual violation	0	4	1	0	1	3	1	4	0	3	17	0.51%
Indecent assault	6	6	3	6	6	26	7	12	2	6	80	2.42%
Aggravated burglary	1	5	2	3	4	2	3	0	1	0	21	0.63%
Aggravated robbery	42	49	36	40	34	41	41	28	56	29	396	11.97%
Robbery	12	3	4	6	4	5	6	1	5	15	61	1.84%
Grievous assault	3	4	0	7	1	4	2	4	3	2	30	0.91%
Other violence	0	1	0	0	0	0	0	0	0	0	1	0.03%
Non-violent sexual	0	0	0	1	0	1	1	3	0	1	7	0.21%
Other against person	10	10	6	4	10	3	8	0	1	0	52	1.57%
Arson	226	195	235	277	296	233	287	200	209	190	2348	70.98%
Wilful damage	9	5	1	0	1	5	0	0	0	0	21	0.63%
Other property	0	0	0	0	0	1	3	0	0	0	4	0.12%
Ob-struct/pervert course of justice	0	1	0	0	2	1	0	0	0	0	4	0.12%
Other miscellaneous	1	0	0	7	0	0	0	0	0	0	8	0.24%
Total	330	289	298	364	367	443	379	275	299	264	3308	100.00%

Notes:

1. Data used to produce this table were sourced from New Zealand Police. Offences were grouped using the Ministry of Justice offence classification rather than the Police classification.
2. Age is at date of apprehension.
3. Date when apprehension was made has been used to determine year.

Report on the "Working Together" Conference, Wellington Town Hall, 26-28 November 2007

By Tracey Cormack, Research Counsel to the Principal Youth Court Judge

I was fortunate enough to be able to attend the Tuesday session in Wellington of the "Working Together" conference on November 27.

Judge Becroft

Judge Becroft was the first keynote speaker, and his informative and interesting speech was very well received. He celebrated the achievements and advancements in youth justice since the introduction of the Children, Young Persons and Their Families Act 1989 and noted that New Zealand is recognised as a world leader in developing a new "paradigm" for youth justice. Successful strategies include police diversion, the intention to charge family group conference, and Youth Court ordered supervision with activity.

However, he commented that our track record in "collaborating" to implement this new paradigm has been patchy and questioned whether "sub-standard" collaborative practice lagged behind "revolutionary" theory?

Judge Becroft voiced concerns regarding an apparent drop in Police use of diversion in the last two years, where diversionary programmes decreased from 55% of all apprehensions to 38% of all apprehensions, and prosecutions in Youth Court increased from 17% to 29% of apprehensions. The decline is concerning as an opportunity is lost to involve family and community for more serious youth offenders, even those for whom there seems an initial necessity to charge. He was also concerned that Supervision with Activity is virtually extinct in some part of New Zealand!

Judge Becroft insisted that collaboration must take place in respect of youth justice and shared his collaborative vision for the future:

- Up to 90% of youth offenders not charged in the Youth Court, but dealt with by firm, prompt, creative community-based diversionary programmes
- Police Youth Aid working in collaboration with local communities
- Intention to Charge FGCs have "new life" breathed into them
- FGCs have high quality need/risk assessments and lead to community-based collaborative programmes
- Supervision with Activity is resurrected and becomes a lynchpin for intervention with top-end offenders

A copy of Judge Becroft's address is available from this office. Phone 04 914 3446.

Dr Lambie

I attended Dr Ian Lambie's session entitled "Listening to

ourselves: An example of successful government – community collaboration." Dr Lambie is the Director of

Clinical Psychology at the University of Auckland, a member of the Ministry of Justice Independent Advisory Group on Youth Offending and the consultant psychologist for the New Zealand Fire Service National Fire Awareness and Youth Intervention Programme.

"Believing in people before they have proved themselves is the key to motivating people to reach their potential"

John C Maxwell

Programme.

Dr Lambie summarised the findings from a 3 year evaluation of three community adolescent sexual offender treatment programmes, SAFE Network Auckland, WellStop in Wellington and STOP in Christchurch. The findings aimed to provide recommendations for improving service delivery, programme effectiveness and better Government policy on the treatment and management of adolescent sexual offenders.

Outcome

An overall sexual reoffending rate of 2% was obtained across the three programmes for those young people who had successfully completed the treatment compared with the rate of sexual offending for those who dropped at 10% and for those who had no treatment at 6%.

A non sexual offending rate of 38% was found for those young people who had successfully completed treatment compared with 44% for those who were not treated and 61% for those who dropped out.

The results indicated that the programmes had a significant impact on lowering the rate of both sexual and non-sexual reoffending among youths that were treated compared with those who dropped out or did not receive treatment.

Full report available on CYFS website
<http://www.cyf.govt.nz/>

Multisystemic Therapy (MST)

Justine Harris, a Clinical Psychologist and National Director of MST NZ, and Parani Wiki, Manager of the Reducing Youth Offending Programme since January 2004 delivered a presentation entitled, "The reducing youth offending MST programme: Lessons learnt from the New Zealand pilot and current developments."

Multisystemic therapy is a well-validated, goal oriented treatment programme that targets each of the specific criminogenic needs of an antisocial youth. MST is delivered in the home, school and community and is planned and designed in collaboration with family members.

A three year project between Child, Youth and Family and

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the Department of Corrections funded three Reducing Youth Offending MST teams (RYO) to target serious youth offenders. The presenters described the findings from the first 3 years of the RYO pilot and stressed that adherence to the MST treatment model is essential. Strong or high adherence is correlated with strong treatment outcomes, and poor adherence is associated with substantially poorer outcomes. Treatment teams and their clinical supervisors receive weekly telephone consultation from a trained MST expert and adherence is the primary focus of these conversations.

Other important elements for successful MST programmes are a continual focus on outcomes, ensuring treatment is accessible and provides cultural best practice.

Dr Alison Sutherland.

Dr Sutherland delivered a very interesting presentation entitled *“Classroom to Prison Cell: the relationship between school and youth offending.”*

Dr Sutherland is a resource teacher of Learning behaviour and a past principal of the Epuni Youth Justice Residential School and completed her Ph.D. last year entitled: *“From Classroom to Prison Cell: Young Offenders’ Perception of their School Experience.”*

The presentation was based on her Ph.D study which explored the school experience of young people who later com-

mitted serious offences.

Dr Sutherland interviewed 19 males and 6 females, aged from 14 to 16 years. Significant findings included that the cumulative effect of negative school experiences may propel a vulnerable young person towards criminal offending, and suggested a link between students who exhibit severe behaviour in schools and young people who become serious offenders. Dr Sutherland shared quotations from the young people in her study, many of which portrayed a sense of disenchantment and frustration with the school system.

The research suggests that by targeting those who exhibit antisocial behaviours in school and then applying an early assessment tool will place us in a stronger position to deflect children from offending. Dr Sutherland has self-published a book entitled *“Classroom to Prison Cell”* in which the stories of the young people are presented. (reviewed below).

STOP PRESS

There is tentative agreement amongst the Youth Justice Leadership Group (Ministries of Justice, Health, Education and Social Development) that a youth justice conference should be held every two years, with the next one proposed for September/ October 2009. Still to be confirmed, but mark your diaries.

Book Review: CLASSROOM TO PRISON CELL by Dr Alison Sutherland

Reviewed by Tracey Cormack, Research Counsel to the Principal Youth Court Judge

The book *“Classroom to Prison Cell”* arose out of Dr Sutherland’s research for her Ph.D. Dr Sutherland had promised the young people involved that she would ensure their stories were told. She eventually self-published as the educational editors wanted a more ‘academic perspective’ rather than the young people’s stories. Dr Sutherland had copies printed at *“First Edition Ltd”* to send to other publishers for their consideration. When the publishers read the book they recommended that she print more copies, as they predicted there might be a lot of interest. When Dr Sutherland was presenting at a conference in September, most of the first run sold within 30 minutes of the presentation! Since then, publisher Stead and Daughters Ltd has picked up the book and will publish the 2nd edition in early 2008.

Dr Sutherland interviewed 25 young people (6 girls and 19 boys) who were resident in three New Zealand youth justice facilities. The young people involved had volunteered to participate and were offered a set of cards with questions regarding their school experiences in New Zealand.

The book is unique as it records the unedited stories of those young people and suggests that school was an unpleasant experience for many of these troubled young peo-

ple.

Several themes arose out of the stories. Most of these young people felt that some of their teachers were racist, or unfair, and they felt that they had been singled out for negative comments and punishments. Almost all of the young people had experienced bullying, both as a victim and perpetrator. Some related horrific stories of being strangled, slapped and pushed by teachers. Almost all of the young people spoke of wagging, with some admitting that they committed crime while out of school.

Dr Sutherland concluded that while negative experience at school does not cause a young person to commit crime, the cumulative effects of those experiences may propel vulnerable young people towards serious offending. She also suggests that the school environment provides a unique opportunity to identify young people who are most at risk of criminal offending. Schools are well placed to support the early intervention process to either ‘delay or deflect young people from criminal offending.’

I found this book a compelling and sometimes shocking read, and I highly recommend it to anyone interested in the education of young people.

For copies of the book the contact details of the publisher are www.steadanddaughters.com or phone 06 348 9095.

Guest Editorial Peter Clague, Executive Principal, Kristin School, Albany

From the desk of....

Listed amongst the low points in my teaching career is a holiday I had in the Far North years ago during which I taught my godson to handle a gun. His parents, having valiantly provided a war toy-free zone during his early childhood, finally realised they were fighting against the forces of nature trying to stop a boy from shooting things. By the time he turned 13 they relented and a rusty old air rifle was soon procured. My arrival on the farm that summer coincided with the height of their despair; prized vegetables were exploding as target practice, gutters had sprung mysterious leaks and the rooster hadn't been seen or heard for days. I was duly dispatched to "teach that boy some common sense".

Over the course of my stay we had a number of instructional lessons in the bottom paddock and I eventually headed back to Auckland satisfied that I had fulfilled my godfatherly duties for the year. A phone call two weeks later burst that bubble. "Call yourself a teacher" fumed my mate, "the boy just shot himself in the leg." I learned that my star pupil had come to enjoy the sensation of the compressed air from the end of the barrel hitting his skin and had developed a habit of firing the empty gun against his thigh.

Until the absent-minded moment when he forgot it was loaded.

The wounded one came on the line and I hit him with that most useless of parental statements, "I TOLD you to be careful!!" There was a long and considered pause before the laconic reply from my teenage protege "Yeah, but what does that actually mean?"

Amidst the current heightened concern about teenage parties at present, I would ask the same question. I have yet to

meet a parent who doesn't want their child to be careful at parties. As with guns, cars and alcohol, we may try to stave off interest and involvement in such parties for as long as possible but we still need to understand that the attraction is natural and inevitable. Unfortunately, the older they get, the more potential for harm the parties they attend present for our children.

It's not enough to simply tell our kids to be careful. It's not even enough to warn them of the dangers. We need to give them practical advice, actual strategies to employ at a party. Encouraging them to "be sensible" is not enough, we need to spell it out, rehearse the scenarios. What credible excuse can you use to reject an unwanted advance or a drunken lift? How can you stop your drink being tampered with? Why do congregations form on the roadside outside a party and what sort of attention might that attract? How exactly could you extricate yourself if you felt unsafe? Work through some simple strategies with them. A simple pre-arranged code-word texted to Mum or Dad that led to them "unreasonably" arriving and taking you home could offer a credible way out of an awkward situation. A seminar held at the school for parents recently offered many such suggestions and these have been collated into a Tip Sheet for Party Safety that is available on the school website.

Teenagers' brains are wired for concrete thinking. Abstract notions such as "Be careful" before attending a party are about as useful as encouraging them to seek inner peace.

We have to be specific about what they should and should not do and that means a detailed discussion that is best given long before they are leaping out the car door. An out-of-control party is no less dangerous to our young people than a loaded gun and despite their protests, our involvement is not about trust it's about safety.

Challenging the Police discretion to charge a young person rather than give a warning – a UK case study

R (on the Application of A) v South Yorkshire Police and the Crown Prosecution Service [2007] EWHC 1261 (Admin)

Commentary by Nigel Stone, University of East Anglia in Youth Justice Journal Volume 7 Number 3 December 2007

Earlier this year in the UK, six students aged 14 – 16, who seriously vandalised a school bus, unsuccessfully attempted to judicially review the decision by Police to prosecute them. Police in the UK have the power to administer warnings and reprimands in much the same way as Police in New Zealand can issue warnings and formal cautions. Police in both jurisdictions operate on similarly low levels of legislative guidance when it comes to deciding whether or not to issue warnings. For extra guidance, Police in the UK are assisted by the *Final Warning Scheme*, issued by the Home Office and the Youth Justice Board in 2002. This document uses a

system called the Association of Chief Police Officers Gravity Factor System, under which all offences can be graded from 1 (least serious offence requiring minimal response) to 4 (most serious requiring a charge to be laid) based on the seriousness of the offence. Gradings for each offence can then be increased or decreased by 1 point after applying aggravating or mitigating factors. The Scheme advises that offences carrying a grade of 3 should be dealt with by a final warning, if it is a first offence. The Scheme also informs Police that research shows that effective interventions at the final warning stage significantly reduce the risk of re-offending.

Despite the young people's offending attracting a grade of 2, which was boosted to 3 by aggravating factors, the Police inspector in charge of the case mistakenly assigned a score of 4. As these young people were first offenders, a grade of

Challenging the Police discretion to charge a young person rather than give a warning – a UK case study

3 would not have been enough to justify a prosecution. Asked to review the decision to prosecute, the Court, however, gave the benefit of the doubt to the Police, holding that the decision to prosecute would not have been unreasonable if the Inspector responsible for making the decision had thought more deeply about the exceptional circumstances of the case, including the use of knives, and the extent of the damage. Stone calls the failure of this challenge to the use of Police discretion “understandable”, given wide public concern about the carrying of knives by young people, but he also sounds a note of concern that such public concern can so easily override the few statutory principles which are meant to guide Police in the use of their powers.

In New Zealand, to our knowledge, the Courts have not been asked to judicially review the Police power to prosecute rather than issue a warning to a young person, or offer diversion to the young person in the form of Police Youth Aid. In *Thompson v Attorney General* 2000 17 CRNZ 628, Justice Panckhurst held that the Police powers in relation to diversion (in this case, an adult offender) are ‘administrative’, not statutory powers of decision, and so are not amenable to judicial review. His Honour went on to say that, even if decisions about diversion were grounded in statute, the Courts normally consider it inappropriate to involve themselves in the rights and wrongs in the exercise of prosecutorial discretion. However, Panckhurst J did add that the Police process in that case had been inadequate, and, if the power was

statutory, then grounds for review would have existed.

In practice, and although New Zealand Youth Court Judges at first appearance have no power to dismiss an information or demand that Police withdraw a charge, Police decisions to prosecute young people in New Zealand are sometimes challenged by Youth Advocates when the young person first appears in Court. In such cases, Police prosecutors will often withdraw the charge and deal with it by community-based diversion. The ruling in *Thompson*, which is based on New Zealand legislation, suggests that Police exercise of the discretion to issue warnings and cautions would be open to review, but that any review would face an uphill battle in an effort to get past the historic unwillingness of Courts to interfere in prosecutorial discretion.

Section 208(a) of the Children, Young Persons and Their Families Act 1989 establishes the principle that criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter. This is a clear statutory directive which may make a High Court review of a decision to prosecute, as opposed to giving a warning or diversion, easier in New Zealand than in the UK.

FETAL ALCOHOL SPECTRUM DISORDER: “Stopping the Revolving Door of the Justice Systems”

Retired Judge, Anthony P. Wartnik

Summary of a paper by retired US Judge, Anthony P. Wartnik, a speaker at the recent NZ YJ conference discussed at page 8.

The paper discusses ten principles for the sentencing and disposition of people with FASD (Fetal Alcohol Spectrum Disorder).

Characteristics of those with FASD

- Individuals with FASD do not fully understand the standards of conduct in the criminal law.
- Individuals with FASD are sometimes impulsive, are anxious to please others and may easily be persuaded to engage in criminal conduct.

Ways in which the presence of FASD in an individual may bear on sentencing and deferred disposition:

- (1) The presence of FASD may reduce culpability for the criminal conduct.
- (2) The presence of FASD may require different measures to reduce the chances of recidivism
- (3) The presence of FASD usually means significant difficul-

ties functioning in adult society.

Ten principles of sentencing and disposition:

1. **Consider whether the disability entails reduced culpability and thus warrants a less severe sentence.**

There is some case law to support the concept of FASD as a mitigating factor.

See *Castro v Oklahoma*, 71 F3rd 1502 (1995), which held that a criminal defendant was entitled to an appointment of an expert to develop evidence regarding FASD providing there was a substantial showing that his mental state was in dispute.

2. **Avoidance of lengthy (or any) incarceration in favour of longer periods of supervision**

Community safety concerns should not control ‘better judgment’. Lengthy incarceration does not usually prevent reoffending in individuals with FASD and often does the opposite, as individuals with FASD have limited grasp of cause and effect.

“Stopping the Revolving Door of the Justice Systems” cont...

3. Use of milder, but targeted sanctions

Generalised deterrence is unlikely to be effective because it is directed at a large complex set of rules, which an individual with FASD does not fully understand as the connection is too abstract.

4. Imposition, or arrangement of a longer term on supervision

Long-term supervision will, (if arranged) avoid recidivism and improve functioning. As neither party will ask for this generally, it may be necessary to seek legislation that mandates longer periods of supervision for people with FASD.

5. Use the Judge’s position of authority with the defendant

The trappings of the Court, authority of the Judge can be important tools for shaping behaviour of those with FASD. Recognitions of success (certificates, tokens) may be helpful. It may be beneficial for the individual to meet with the Judge after formal supervision. Judge Wartnik met with people on probation regularly and found this aspect of his job particularly rewarding.

6. Obtain a proper sponsor or advocate for the defendant

Individuals with FASD need ongoing assistance from non-disabled people, eg. family member, church group.

7. Create structure in the defendant’s life

FASD individuals lack the basic skills to organise their

day. Structure could include linkage with vocational rehabilitation services, a sheltered workshop. External structure could include living in a group home or facility, or a very structured part-time job.

8. Write out, simplify and repeat rules/conditions of supervision

FASD individuals will not assimilate rules or admonitions from a Court or probation. The judgment, conditions of supervision should set out the steps simply. Repetition is the key, and probation officials, and perhaps the Court need to repeat the rules.

9. Ensure the probation officer understands FASD

The probation officers, prison officers should know that the defendant has FASD and should also understand FASD.

The Court, or probation officer might want to give the defendant a card that says, “I have FASD. I want to talk to an attorney...”

10. Do not overreact to parole violations – particularly status offences

Failure to attend an appointment is not usually an act of defiance, but a symptom of disability. One suggestion was that a system of prompts to be implemented to assist those with FASD in meeting their obligations.

BOOK REVIEW: The Curious Incident of the Dog in the Night-time, by Mark Haddon

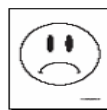
Written by Mark Haddon, Published by Doubleday

Reviewed by Tracey Cormack

This unique novel is written from the perspective of a 15 year old boy. Christopher suffers from Asperger’s syndrome, and although this is never explicitly stated in the novel, it is mentioned on the cover.

Christopher discovers the ‘murdered’ body of Wellington, a neighbour’s dog, and then decides that he will investigate the murder and then write a book about it with the help of his teacher Siobhan.

The book highlights the special characteristics of those who have Asperger’s Syndrome (a form of autism), in particular the difficulty of interpreting emotions, non-verbal communication and colloquial language.



“Eight years ago, when I first met Siobhan, she showed me this picture and I knew that it meant ‘sad’ which is what I felt when I found the dead dog.”

Christopher has a particular interest in and talent for mathematics and uses these skills to help solve the murder mystery. He is hypersensitive to certain colours and cannot stand being touched. When he is touched or manhandled he has a violent and uncontrollable reaction. The novel provides some insight into what it might feel like to have Asperger’s Syndrome, although the type of high functioning autism exhibited by Christopher is quite rare.

The novel won the Whitebread Book Awards for 2003.

The book is a great read and I recommend it to anyone interested in autism and other neurological conditions.

Law and Order Committee recommends against passing bill.

Source: *The Dominion Post*, Tuesday 4 December 2007

NZ First MP, Ron Mark will make lowering the age of criminal responsibility to 12 a priority in any coalition talks. However, the Law and order Committee has recommended against passing the Young Offenders (Serious Crimes) Bill which would have allowed 12 year olds to be charged and dealt with in the Courts.

The Bill was opposed by many youth justice and legal groups including Judge Becroft, the Children's Commissioner Cindy Kiro, The Human Rights Commission and the Law Society.

YOUNG OFFENDERS (SERIOUS CRIMES) BILL

Committee's conclusion

We believe much work still needs to be done to improve the youth justice system. While the majority of us did not believe that the Young Offenders (Serious Crimes) Bill was an effective tool to make such changes, we think our consideration has been very useful in highlighting many important concerns. We are sure that the submissions and advice received in consideration of this bill will prove to be a valuable resource for future legislative proposals.

Government aims to raise criminal age

Source: *NZ Herald*, Tuesday 4 December, 2007.

The Government has tabled the Children, Young Persons and Their Families Amendment Bill which aims to raise the minimum age for an offender to be dealt with in the adult Courts from 17 to 18. Social Development Minister Ruth Dyson said that the Bill came out of extensive consultation, and there was a consistent message that young people had to be held accountable to the community and victims. Minister Dyson emphasised that the age change was needed to meet the United Nations Convention on the Rights of the Child.

NZ First MP Ron Mark opposes the bill and believes it would see 17 year olds flout the law.

Judge Becroft notes that the inclusion of 17 year olds within the youth justice system would mean that they would have all the advantages of the present youth justice system such as community based diversion for lower end offending and the use of the Family group Conference process. At the same time all of the current options of the adult Court would be retained. Importantly, s18 Sentencing Act 2002 will **not** apply to seventeen year olds.

Tempering justice with mercy – out of fashion!

Source: *The Dominion Post*, Monday December 3, 2007

'In some parts of New Zealand, individual youth aid constables are struggling with large case loads, with the inevitable result that they are sending more people to Court.'

At the recent "Working Together" conference Judge Becroft voiced concern regarding the 'sharp drop' in the numbers of young people being given police diversion. He suggested that the most compelling reason was a lack of police resources and argued that it is not in the best interest of young offenders nor the community to expose young offenders to the formal justice system. He cited evidence from the U.S.A showing that contact with the formal youth justice system would lead to "a reasonable likelihood of increasing the level of criminal activity in early adulthood."

While not arguing for abandonment of tough measures, Judge Becroft challenges the thinking in relation to the 'get tough' approach. He argues that if the aim is to reduce reoffending, a better approach would be to 'straighten out young offenders' in the community.

Victim participates in family group conference

Source: *The Northern Advocate*, Saturday, September 8, 2007

"The Family Group Conference is more than just a slap on the wrist with a wet bus ticket." Principal Youth Court Judge, Judge Andrew Becroft.

Darla Holland was attacked from behind by a 14 year old boy. He punched the face of the 61 year old woman, knocking her to the ground and leaving her unconscious. The next day the same young person knocked down an 80 year old woman, robbing her of \$80. The young person was sentenced in the Youth Court to

three months in a youth justice facility, followed by six months intensive community based supervision.

Before the sentencing Mrs Holland had an opportunity to confront the young person at a family group conference (FGC). She showed him photographs of her bruised face and demanded that he acknowledge the damage he had caused. The young offender apologised to Mrs Holland, and while she was uncertain whether he was truly sorry or not, she was found the family group conference process helped her move on. At the FGC Mrs Holland read a quote to the young person:

"Respect for self, respect for others and responsibility for all your actions throughout life."

She gave him a copy and told him to read it every day and think about what it meant. While she was still angry, Mrs Holland hopes the young man will choose the right path and not re-offend. She was encouraged to take part in the process by Victim Support and Child Youth and Family, which had flown her to the FGC.

Judge Becroft praised Mrs Holland for taking part in the FGC process and urged other victims to participate saying:

"It provides a means whereby a young offender can be directly and emotionally confronted by the human dimension of his or her offending and its effects on a victim."

Court In the Act is published by the Chambers of the Principal Youth Court Judge - Judge Andrew Becroft and edited and produced by Tracey Cormack and Timothy Hall Research Counsel to the Principal Youth Court Judge.

Court In The Act welcomes contributions or comments from anyone involved in youth justice in New Zealand or overseas.

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Dear Dad

School is really great. I am making lot\$ of friend\$ and \$tudying very hard. With all my \$tuff, I \$imply can't think of anything I need, \$o if you would like, you can ju\$t \$end me a card, a\$ I would love to hear from you.

Love, your \$on.

Dear Son

I kNOW that astroNOmy, ecoNOmics, and oceoNOgraphy are eNOugh to keep even an hoNOur student busy. Do NOT forget that the pursuit of kNOWLEDge is a NOBLE task, and you can never study eNOugh.

Love Dad