"Court in the Act"

The Youth Court; The Children, Young Persons, and their Families Act 1989; And topical issues arising for NZ Youth Justice practitioners

A newsletter co-ordinated by the Principal Youth Court Judge for the Youth Justice community
Contributions, feedback and letters to the Editor are not only acceptable, but encouraged

Youth Court Website: http://www.courts.govt.nz/youth/ No.18, September 2005
(Now includes a database of useful reported and unreported Youth Court cases)

"Our greatest communication tool is not our mouth – it's our ears!"

NZ Grapevine Magazine, Issue 2/2004 p49

In this Issue …

[Press the heading for hyperlink access]

Why Publish "Court in the Act"?

Judge Becroft, Principal Youth Court Judge

"COURT In The Act" was originally designed as a newsletter for Youth Court Judges. However, it soon became obvious that the wider youth justice community in New Zealand was interested in much of the material that was being circulated. Also there is no national youth justice publication as to current issues, relevant cases, and important overseas developments.

I will continue to produce "Court In The Act" – but simply as a foretaste of a more organised and regular publication to come. Until the arrival of a new publication, my office will act as a "clearing house" for all matters of interest regarding youth justice. I am happy to send out any items of national interest that people want to send me.

We have also collated a significant database of those receiving "Court In The Act". If you know of others who should be on the list please contact my PA, Lavina Monteiro, ph. 914 3446.

1. Guest Editorial

This edition's guest editorial is taken from a message from the Chief Magistrate of Tasmania, Magistrate Arnold Shott. It is reproduced with his permission.

> "A hundred years from now it will not matter what my bank account was, the sort of house I lived in, or the kind of car I drove…but the world may be different because I was important in the life of a child."

Last month in a pub in North-eastern Victoria, my wife, Lyn, and I stumbled across this quotation on a postcard.

It so impressed me that I researched its origin.

It is an adaptation of a statement made by Forest E Witcraft who was an American scholar, teacher and scout leader (1894-1967).

I say 'adaptation' because in the original statement (made half a century ago when attitudes, I know, were a little different) the word 'boy' appears, rather than, 'child'.

Whether 'boy' or 'girl', I think the sentiment remains compelling – particularly for all Magistrates and Court staff who have responsibilities in both the Youth Justice and Children's Divisions of the Magistrates Court of Tasmania.

The source of the quotation is the following article in the October 1950 issue of *Scouting* magazine.

"WITHIN MY POWER"

I am not a Very Important Man, as importance is commonly rated. I do not have great wealth, control a big business, or occupy a position of great honor or authority.

Yet I may someday mould destiny. For it is within my power to become the most important man in the world in the life of a boy. And every boy is a potential atom bomb in human history.

A humble citizen like myself might have been the Scoutmaster of a Troop in which an undersized unhappy Austrian lad by the name of Adolph might have found a joyous boyhood, full of the ideals of brotherhood, goodwill and kindness. And the world would have been different.

A humble citizen like myself might have been the organizer of a Scout Troop in which a Russian boy called Joe might have learned the lessons of democratic cooperation.

These men would never have known that they had averted world tragedy, yet actually they would have been among the most important men who ever lived.

All about me are boys. They are the makers of history, the builders of tomorrow. If I can have some part in guiding them up the trails of Scouting, on to the high road of noble character and constructive citizenship, I may prove to be the most important man in their lives, the most important man in my community.

A hundred years from now it will not matter what my bank account was, the sort of house I lived in, or the kind of car I drove. But the world may be different, because I was important in the life of a boy."

***

Even if the next child you see in Court is not a potential Adolph Hitler or Joseph Stalin, small steps with ordinary people can have enormous benefits for them – and for you and for me and for our community.

A G Shott
Chief Magistrate

Click to go back to contents

2. South Pacific Council of Youth & Children's Courts

Judge Becroft, Principal Youth Court Judge

In July I attended the meeting of the South Pacific Council of Youth & Children's Courts held in Suva.

Ten years ago the forerunner to this organisation first met, known as SCANZYCC. There is some debate as to the words which those letters stood for. The best approximation is the Standing Committee of Australia and New Zealand Heads of Youth and Children's Courts. Originally, that comprised of the Heads of the Youth and Childrens Courts of Australia and New Zealand and the "organisation" met annually at various locations throughout Australia and New Zealand.

Two years ago, it became the SPCYCC – that is the "South Pacific Council of Youth & Children's Courts".

The change is more than a change of name – it represents a major shift in focus from Australia and New Zealand to the South Pacific as a whole, in which Australia and New Zealand are only two nations.

The Council now comprises the Heads of jurisdiction (or other appropriate judicial officers) of Youth & Children's Courts of all Australian states and territories, Fiji, Kiribati, New Zealand,

Papua New Guinea, Samoa, Solomon Islands and Vanuatu.

The meeting I recently attended was the best ever – with first time representation from Kiribati, Vanuatu and the Solomon Islands. Some of these countries are amongst the least developed in the Pacific. The three that I mention have no specific youth justice legislation. Samoa is in the process of adopting specific legislation for ten to eighteen year olds. Fiji is in the process of overhauling its out-dated youth justice legislation.

There are real opportunities for New Zealand to provide assistance and encouragement as some of these South Pacific countries develop their own culturally appropriate Pacific specific youth justice processes. Our family group conference system is particularly suited to these countries, emphasising as it does the importance of the family, community involvement, and family/community based rehabilitation.

A feature of this year's meeting was the adoption of an agreed set of purposes, the development of a website based out of the Tasmanian Children's Court site, and the development of a jurisdictional folder summarising the key aspects of every member country/state/territory children's and youth justice legislation.

The real purpose of the Council was now to assist all the nations in our region to develop principled youth justice and child protection systems and to support the rule of law.

In order to try to achieve these purposes, the Council has formed alliances with UNICEF, AUSAID, NZAID and the Pacific Islands' formed Secretariat.

The Council has two specific and vitally important projects underway

1. Plans to hold a workshop for Judges and Magistrates from the smaller Pacific Island nations later this year, probably in Fiji
2. A programme to assist them in the development and implementation of relevant, specific youth justice legislation. Much of this legislation is based on a best practice model developed by Judge Peter Boshier when he was based in Suva with the Pacific Judicial Education Project. His work has left a lasting legacy.

Both these projects are "vitally important, because each has the potential to have a multiplier effect" – a pebble in the pond notion.

Through such projects, the Council can, with the support of the judicial and non-judicial officers of the Courts that we represent, make a worthwhile difference for the young people in our region.

Click to go back to contents

3. Limitation of JP's Powers

Rhonda Thompson, Research Counsel to Principal Youth Court Judge

REMAND powers of Justices of the Peace and Community Magistrates are limited to a young person's first Court appearance. This has the effect that JPs cannot conduct the daily review of a Police cell remand. If no Judge is available, the matter must be dealt with by a Judge by telephone conference.

Justices of the Peace and Community Magistrates ("JP/CMs") may exercise powers under s238(1) Children, Young Persons and Their Families Act 1989 ("CYPFA") when a child or young person *first appears* before the Youth Court *following arrest* (CYPFA, s321(5)(a)). Thus, on a first appearance a JP/CM may remand the child or young person at large, on bail or in custody pending further hearing, under s238(1). Where the child or young person is legally represented and indicates a plea of "not denied", powers under s246(b) CYPFA may also be exercised on a first appearance (CYPFA, s321(5)(b)). Thus, a JP/CM may direct a Youth Justice Co-ordinator to convene a FGC and adjourn proceedings until that FGC has been held. Section 321(5) reads:

> [For the avoidance of doubt, it is hereby declared that, in any case where a child or young person first appears before a Youth Court following his or her arrest, the following powers may be exercised in relation to the child or young person by a Justice [or Community Magistrate]:
> (a) The powers conferred by s238(1) of this Act:
> (b) Where the child or young person is legally represented in the proceedings, the powers conferred by section 246(b) of this Act.]

Section 321(5) makes it clear that these powers relate only to first appearances. JP/CM powers are further limited in that where a young person who has not been arrested first appears before the Court after a "pre-charge" FGC, there is no power to make s238(1) orders as there must be an arrest before these powers exist.

Further, a JP/CM cannot exercise any of the powers conferred by section 34 of the Bail Act 2000 as to variation, revocation or substitution of any bail condition. However, under section 35 of the Bail Act, JP/CMs *must reconsider* the bail of a young person who the Police have arrested believing they have absconded, may abscond or

have contravened, or failed to comply with, any condition of bail. As the young person has been arrested a second time under section 35, their appearance may be described as a "first appearance" since that second arrest, giving the JP/CM authority to make orders under s238(1).

Click to go back to contents

4. A young, drunk driver writes to the Court

"A Life for a Good Night"

1. Drunk driving can affect so many lives so fast when you think it's going to be okay.
2. Innocent lives get taken, also innocent people, family face a lot of consequences as well.
3. Uncontrolled drinking has consequences.
4. Inexperienced drivers can be careless when they think it okay to drive.
5. You can still be drunk when you think you are sober.
6. Haunting memories never leave you or the innocent people that have been affected.
7. Drink driving and swapping drivers put an extra risk of danger around everyone.
8. Seeing death makes it a real reality.
9. Think before you drive at all times.
10. Not readily conscious, mind not there your body is.
11. Too many people driving drunk.
12. Your life will change for ever.

Click to go back to contents

5. Key Papers Regarding Youth Justice

A selection of papers that summarise New Zealand's youth justice system are listed below. Copies of these papers can be obtained from Rhonda Thompson, Research Counsel to the Principal Youth Court Judge (email Rhonda.Thompson@justice.govt.nz).

- Judge A J Becroft, Principal Youth Court Judge
  Youth Justice – The New Zealand Experience: "Past Lessons, Future Challenges"
  Paper for Juvenile Justice Conference, Sydney, 2003 (53pp)

  Covers youth justice system, FGC procedures, statistics, strengths and weaknesses of the system
- Judge A J Becroft, Principal Youth Court Judge
  Practice and Procedure in the Youth Court (20pp)
- Judge A J Becroft, Principal Youth Court Judge
  Youth Justice in New Zealand: Future Challenges. "Never too Early, Never too Late". Paper presented at the New Zealand Youth Justice Conference 2004 (68pp)

  Ten Challenges to youth justice in New Zealand
- Judge D Carruthers
  Can Courts and Judges Tackle Social Problems: Problem-Solving Courts: the New Approach
  Paper presented at Portsmouth University 2004 (31pp)

  Problem solving justice systems; therapeutic jurisprudence; Youth Court; Youth Drug Court; Family Violence Pilot
- Mike Doolan
  Work With Young People Who Offend
  Paper presented in Glasgow, Scotland 2001 (14pp)

  New Zealand youth justice system; positives and negatives; research; types of offender; what works with different types of offender.
- K Ferguson
  Youth Justice in New Zealand; Family Group Conferences (24pp)
  Explanation of FGCs, FGC issues such as confidentiality, timing, victims.

- Judge Geoghegan
  Youth Justice, Care and Protection and Restorative Justice in NZ
  Paper presented to the Save the Children (UK) Seminar on the People's Republic of China Law on the Protection of Minors in Beijing, China 2005 (57pp)

  New Zealand youth justice system; explanation of; does it work; care and protection; restorative justice.

- Judge C Henwood
  CYPFA: The NZ Situation 1997: A Judicial Perspective (46pp)

  Youth justice system in New Zealand; issues including victims, Police, FGCs, examples of serious cases and their handling; what has been achieved in New Zealand.

- ***The Youth Court in New Zealand: A New Model of Justice***
  Four papers edited by Associate Professor of Law B J Brown and Judge FWM McElrea 1993 (49pp)

  A New Model of Justice (FWM McElrea); Youth Justice – Legislation and Practice (MP Doolan); What is to be Done about Criminal Justice? (John Braithwaite); The Youth Justice Co-ordinator's Role – A Personal Perspective of the New Legislation in Action (Trish Stewart)

- Judge FWM McElrea/Judge CJ Harding
  Some Aspects of Procedures and Sentencing
  Paper presented to the New Zealand Youth Court Judges Conference 2001 (29pp)

  Procedures prior to sentencing; sentencing issues including convict and transfer to the District Court; sentencing in serious cases; young people close to top of age range.

- Judge FWM McElrea
  The NZ Model of FGCs (17pp)

  Overview of New Zealand youth justice system; FGC as diversionary mechanism; reduced use of custodial outcomes and of the Courts; role of the Police; adjudication; post-adjudication; FGC as restorative justice technique for adults.

- Judge FWM McElrea
  The NZ Youth Court: A Model for Redevelopment in Other Courts
  Paper presented to the National Conference of District Court Judges 1994 **(19pp)**

  The Youth Court Model of Justice; testimonials by youth justice professionals; origins of restorative justice; international perspectives of restorative justice; the prospects of applying the Youth Court system to adults; acceptance by the public.

- Justice of the Peace/Community Magistrates' Powers in the Youth Court (3pp)

- On Youth Court Website
  Youth Court: Overview of Principles and Process; Commonly asked question and answers

Click to go back to contents

6. Royal Honour for Judge David Carruthers

Judge Carruthers will need no introduction for most of you. He was the Principal Youth Court Judge from 1996 until 2001, and then assumed the responsibility of Chief District Court Judge until April 2005 upon his retirement to take up the chairmanship of the New Zealand Parole Board.

David's judicial career has been a glittering one, discharged with great humanity, energy, determination and commitment. He is loved by us all.

Fittingly, he was awarded the equivalent of a knighthood (under the old Honours system) in this Queen's Birthday Honours round.

No doubt many of you have congratulated him already in appropriate ways – which I know he has appreciated.

It is, however, important to formally record our congratulations to Judge Carruthers in this publication.

Click to go back to contents

7. Case Law Update

A RECENT addition to the Youth Court Decisions website is the "Youth Court Case Update". This includes a round-up of case summaries from recent cases of interest. The summaries can be accessed by going to www.justice.govt.nz/youth/decisions and clicking on the "What's New Link" which is in blue in the first paragraph.

This takes you to a selection of new cases arranged with information about their subject matter. Click on the case name of interest to see the full summary. As ever, copies of the full judgment can be obtained from the office of the Principal Youth Court Judge by emailing Rhonda.Thompson@justice.govt.nz.

We hope to publish the Youth Court Case Update bi-monthly. The first edition of the Update, available on the Youth Court website now, features the following cases:

- *Police v KF* (22 June 2005) YC, New Plymouth, CRI 2001-221-000012, Judge Becroft DCJ

  Admissibility of statement; Jurisdiction of Youth Court – s275 offer/election

- *Police v RJM* (13 June 2005) YC, Invercargill, CRN 5225005848, Judge Walsh DCJ

  Bail

- *Police v SG* (13 June 2005) YC, Tokoroa, CRI 2005-077-485, Judge Geoghegan DCJ

  Orders – Supervision with residence – CYPFA s283(n)

- *Police v HK* (13 June 2005) YC, Nelson, CRI 2005-242-32, Judge Whitehead DCJ

  Supervision - s283(k); Orders – Supervision with residence – s283(n)

- *Police v Ladbrook* (16 June 2005) DC, Invercargill, CRN 4225018618, Judge O'Driscoll DCJ

  Name Suppression; Sentencing in the adult Courts - Other

- *Police v T* (17 June 2005) YC, Wanganui, CRI 2005-283-004277, Judge Callinicos DCJ

  Reparation; Order – Supervision – s283(k)

- *Police v VM & CC* (17 June 2005) YC, Rotorua, CRI 2005-263-74; CRI-2005-263-71, Judge Hikaka DCJ

  Evidence

- *Police v E & T* (15 February 2005) YC, Wanganui, Callinicos DCJ

  Jurisdiction of the Youth Court - s276 offer/election

- *Police v CMT* (6 May 2005) YC, Wanganui, CRI 2004-283-44, Judge Callinicos DCJ

  Supervision with activity; Supervision

- *Police v TJV* (7 April 2005) YC, Manukau, CRN 05292007792; CRN 05292007793, Judge Simpson DCJ

  Delay

- *Police v DJT* (7 April 2005) YC, Manukau, CRN 04292067113, Judge Simpson DCJ

  Delay

- *Police v WR* (2 May 2005) YC, Rotorua, CRI 2005-265-57, Judge Geoghegan DCJ

  Family Group Conferences – Timeframes/limits

- *R v JS* (27 January 2005) DC, Gisborne, CRN 2004-216-65, Judge Gittos DCJ

  Evidence; Youth Court Admissions

Click to go back to contents

Her Honour Judge Karina Williams

This edition of Court in the Act is sent out with real sadness, because as we now all know, our beloved colleague, Her Honour Judge Karina Williams, died on Friday 2 September, after a short, but very extreme, battle with cancer. She was first diagnosed on 19 July. She finished work on 11 August. She fought right to the end. We are told she died peacefully. She died at the tragically young age of 42, and had already made an outstanding contribution to the Youth Court in Manukau and South Auckland.

We extend sympathies to her family, but especially to her husband Richard and her twelve year old daughter, Kataraina.

The funeral, held on 6 September at the Manurewa Marae, was a powerful and moving service. Her good friend, Youth Advocate Laverne King, spoke about her life and contribution, and our own Judge Ida Malosi provided a very moving tribute, laced with great humour and profound sadness.

The Chief District Court Judge for New Zealand, Judge Russell Johnson, spoke at the graveside on behalf of all New Zealand Judges, in a very helpful, appropriate and sympathetic way.

It is still hard to believe that Judge Williams is dead – it seems such a waste, and we will feel her loss so keenly for so long. There are, of course, now the real challenges for us all to build on Karina's legacy.

The Order of Service for the funeral ended with a quote from a speech presented by Judge Williams to the United Nations Development Fund for Women on 8 March 2004. It reads as follows:

"The vision and the role models I have been fortunate to have, have ensured that my path was actually already set and to a large degree inevitable. I am simply a product of what has gone on before and I take none of that for granted. I am an extremely ordinary person who has been fortunate to have had extraordinary opportunity and support."

Click to go back to contents

SPECIAL FEATURE

Early Identification of Young Offenders

In response to Judge Becroft's article on the front page of 'The Dominion Post' on Wednesday, 29th June 2005: "How to pick a crim at age 3".

As he quite rightly stated, a large proportion of the next generation of young offenders can be identified at an early age. My own PhD research through Victoria University (due to completion at the end of this year) takes a phenomenological approach to New Zealand young offenders' perspective of their school experience, and confirms through their self-reports that they are identifiable through the school system from as early as six years of age.

The Children's Commissioner, Cindy Kiro, is also correct in warning that the labelling of children as potential offenders can be harmful. However, a robust critical-risk-assessment screening tool that identifies children who are at the greatest risk of future criminal offending minimises the harm of false positives and benefits the identified children, their families, and the wider community.

From my reading I learnt that many scholars over the years had been searching for a successful methodology of identifying the developmental trajectory to youth offending. A 2003 review commissioned by the Ministry of Education, produced by John Church and his team from the Education Department at the University of Canterbury, outlined a number of studies on offer and concluded that "There is currently no standardised screening instrument (for antisocial children), designed for New Zealand use, which New Zealand teachers, resource teachers, or special education personnel can operate." I believe they were unaware of a recent innovation being developed in Canada. In one of the chapters written in a book edited by Loeber & Farrington - arguably two of the current most noted experts on youth offenders and delinquents – they referred to a screening tool being developed to assess the propensity for children aged 6 years to 12 years at high-risk for future youth offending. Whilst they stated that it had not yet been validated, they suggested that it had potential.

I contacted the developers of this 'critical risk assessment screening tool' and so began a new direction and intense period of my research. The authors sent me the manuals and some recommended reading so that I might gain more understanding of how the screening tool developed. Once I grasped how to use the manuals, I began to apply the methodology to the information I had about the participants in my own research. Allowing that I had little information on the participant's backgrounds, especially in regards to their family – I was only able to partially apply the tool. However from the information that the young people had shared with me, I became convinced that the work by Leena Augimeri and her team was on the right track towards an effective screening tool to identify children at high risk of future criminal offending.

I also saw a connection between my research around young offenders' school experience and my work as a Special Education Adviser (SEA) for New Zealand's Ministry of Education/Group Special Education (MOE/GSE). In my role as Lead-worker in the School Focus, Behavioural team, I work with the one percent of children aged 6 to 15 whose education is at risk because of the severity and frequency of their challenging behaviours. Does it follow that the children and adolescents I work with are the most at risk of future criminal offending? Retrospectively, using the considerable background information that I had already gathered whilst working with individuals, I began to apply the tool. The result was both encouraging and exciting both in regards to my research and my work. What I found was:

a. Some of the children I work with scored very highly on the tool and, given the number and combination of critical risk factors identified, could be considered to be highly at risk of criminal offending

b. Others scored relatively low on the tool, had very few of the critical risk factors and would be considered to be at low or moderate risk of future offending, however their current antisocial behaviour remains a concern.

c. The final score that was generated through assessing each item was of relatively low importance compared to the critical risk factors that were identified.

d. That the combination rather than the number of critical risk factors may be a more accurate indicator of future offending.

e. The tool is an extremely effective screening tool when working with children with severe and challenging behaviours, not only to assess them for future criminality, but to identify and highlight those critical risk factors that were driving their current antisocial behaviours.

f. By using the tool to identify the critical risk factors driving the current antisocial behaviours, the Lead-worker can develop interventions that address these immediate concerns and thus work more effectively.

g. The tool as it was presented would need to be adapted to take into account the New Zealand justice system and the concerning statistics that show a large proportion of the young people in CYFS Youth Justice Facilities are Maori.

For the purpose of adapting the tool to take into account the New Zealand situation, I met with New Zealand's Principal Youth Court Judge, Andrew Becroft. Following our discussion, and after further reading around the treatment of Maori and other minority groups in New Zealand, I wrote to Leena and her team requesting permission to add a new item to the New Zealand version of the tool – Community Responsivity. Their response was an invitation to attend a conference on Assessing Children at Risk of Offending, and to meet and train with Leena and her team in Toronto.

Before I set off for Toronto in November, 2004, an opportunity to use the tool in my work developed; a group of Lead-workers from several Wairarapa Government Agencies took the initiative and came together to form the 'Critical Risk Assessment and Intervention Team' [CRAIT].

The newly formed CRAIT piloted the New Zealand version of the tool at a Masterton primary school selected by the team because of the principal's positive attitude and willingness to work collaboratively in the community. Despite being a newly merged school, there was a united recommendation among the education professional members of the Critical Risk Assessment and Intervention Team. Their counsel proved correct, the principal and his teaching staff were receptive and encouraging. Following a presentation at their next staff meeting, four referrals for an initial assessment were received – one girl and three boys. Of these, one boy and the girl had sufficient indicators to warrant further investigation by the team. However, before we could gain parental permission to begin a formal assessment of the girl, she moved out of the area.

Word of the CRAIT spread around the community and within weeks of the presentation at the first staff meeting we received a phone call from the Deputy Principal of another local school – they had an 11-year-old boy that they were considering excluding but were reluctant to do so until every avenue had been explored. Would we consider helping them? They gained his mother's permission for the assessment and he became our first real trial case.

Toronto began with attendance at a two-day training conference on Risk Assessment and Management. The presenters were Leena Augimeri, Christopher Webster, and Randy Borum, acknowledged leaders and researchers in their field of child and adolescent violence. Intensive training on managing the Critical Risk Factors followed at the Canadian 'Centre for Children Committing Offences' and included direct observation and participation in a self-control behavioural intervention strategy. Training

included more intensive work on the tool, the process of interrupting youth offending, appropriate interventions, sharing our research experiences and ideas, and meeting with David Farrington who was visiting from the United Kingdom. I was also given an opportunity to present my research and the New Zealand version of the tool.

On my return to New Zealand, following presentations to my colleagues, service and regional manager, we commenced a pilot of one of the early intervention packages developed in Canada, adapting it to better suit the needs of our New Zealand children. This programme has since been completed, teacher and parent evaluations have been collected and post-assessments will commence in September.

Yours faithfully

Alison Sutherland
(M.Ed.; PhD candidate)
SEA, MOE/GSE, Wairarapa Office

Click to go back to contents

SPECIAL FEATURE 2

Adolescent Sex Offending

Dr Ian Lambie, a member of the youth justice IAG, has referred us to a recent helpful review of a new American publication about legal responses to adolescent sex offending. This is a matter which is very troubling amongst youth offenders, and I think this review is provocative and thoughtful. I set it out in full.

AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEX OFFENDING, by Franklin E. Zimring. Chicago: University of Chicago Press, 2004. 216pp. Cloth. $29.00. ISBN: 0-226-98357-9.

Reviewed by Mark Chaffin, Professor of Pediatrics, University of Oklahoma Health Sciences Center. Email: Mark-Chaffin@ouhsc.edu

There was, until the end of the eighteenth century, a theory that insanity is due to a possession by devils. It was inferred that any pain suffered by the patient is also suffered by the devils, so that the best cure for insanity is to make the patient suffer so much that the devils will decide to abandon him. Bertrand Russell

This is not a good time in history to be a teenager caught engaging in illegal sexual behavior. Although proponents might argue, with some reason, that our current and very aggressive legal and treatment response to these youth represents an improvement over years of blindness and silence, it is almost a given that advocacy tends to be followed by excess. “Boys will be boys” has given way to moral panic about sex offenders and perceptions of these youth as uniquely dangerous, recidivistic, and possessed by the demon of hidden sexual abnormalities which can be driven out only by aversively overpowering the resistance of the possessed and his family. Youth may undergo years of compelled therapy, in which they must conform their thinking to a therapy-model which assumes that their behavior is part of a compulsive and repetitive “cycle.” They may be required to keep journals of deviant sexual fantasies, and, most of all, required to confess. Confess their deviancy and differentness. Confess their past offenses—incriminating themselves if need be. Confess that their ostensibly normal social behavior is “victim grooming.” Confess that their motives are rarely benign. Confess that they are and always will be a sex offender. Failure to espouse the correct beliefs about oneself as different, deviant, and at continual risk may be grounds for loss of basic freedoms and sanctions.

In many States using what is known as a “containment approach,” youth may be required to register with law enforcement, and report to police when they travel, go to college or take a new job. Worse, many must bear their label publicly, including official postings on the internet. Depending on the State of residence, these burdens can be life-long, even if based on behavior that occurred as a preadolescent child or early teenager. In “containment approach” communities, youth must undergo and pay for regular polygraph interrogations to check (with unknown but scientifically questionable validity) for “inappropriate thoughts” or until confessions of hidden past offenses, lapses in thinking, and deviancy are extracted. Families may be required to inform schools, family friends, and social contacts about the nature of their adolescent’s sex offense and his presumed ongoing proclivity to re-offend. The unfortunate consequence of labeling these youth as deviant, different and uniquely dangerous has been an [*795] abandonment of more benign tenets of both the juvenile justice and mental health systems—namely the assumptions that most youth, provided with a reasonable amount of structure, guidance and support, will mature out of delinquent behavior, and that treatment providers serve as allies rather than adversaries of their patients. The juvenile justice system is of course concerned with sanctions, but it has always been equally concerned with integrating delinquent youth more into normal, prosocial teenage life—engagement with school, sports, jobs, and a positive social life. For juveniles, public stigma has been viewed as counterproductive because it interferes with normal social integration and development. With youth who commit sex offenses, on the other hand, segregation rather than integration has been the priority, and in some states public stigmatization is a specific policy mandate. No other type of juvenile offender is viewed with such suspicion, and no other type of juvenile offender experiences comparable exceptions to customary juvenile justice and treatment philosophies.

In all fairness, I should note that there is considerable controversy among juvenile sex offender treatment professionals and researchers

about most of the policies and practices I caricatured above. Actually, many of the more recognized authorities in the field have long abandoned these perspectives, if they ever held them at all. Unfortunately, these harsh perspectives originally developed for adult sex offenders, but then handed down to juvenile policy and practice, have not only taken root but seem to have flourished in some settings and taken on a life of their own. Many of the harshest beliefs about these youth have become so reified in insular clinical practice cultures and in the public eye that they roll on unimpeded by the facts. It is always easier to stir fear, anger, righteous indignation and intolerance than to calm it. And, besides, who wants to defend sex offenders?

The idea that we have gone too far in our handling of these youth, and that the available science supports few, if any, of the harsh practices described above, has been expressed in panels commissioned by the U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP 2000) by myself (Chaffin and Bonner 1998) and others in the field (ATSA 2000; Becker 1998; CSOM 1999; Hunter, et al. 2004; NCSBY 2003; Righthand and Welch 2001). The ongoing debate between proponents of "tough" and "soft" approaches toward these youth largely has been carried out within the confines of academia or within the tiny field of juvenile sex offender treatment. What has been missing is a clear, legal- and policy-oriented analysis of the issues which can catalyze reanalysis of current thinking. Franklin Zimring provides this. AN AMERICAN TRAVESTY is an opinionated, articulate and forceful critique of current policies and practices, measuring them against the values on which the juvenile justice system was founded along with a clear analysis of the existing science. Zimring's critique is unique in analyzing the issue from a combined base of history, law and values, as well as scientific evidence, consequently bringing new dimensions to this dialogue.

The scope and interpretative grasp of scientific evidence is impressive and for [*796] the most part up to date and accurately presented. The book is not intended to be a comprehensive presentation and analysis of the scientific literature, and readers seeking this should be advised to look elsewhere. However, Zimring gets it right about those points that are central to developing sound public policy. These include exposing misconceptions about high sexual reoffense rates (detected sexual reoffense rates are quite low and always have been); the fact that most of these youth have more in common with other teenage delinquents than they do with adult pedophiles or rapists; that the risk for non-sexual re-offenses is vastly higher than the risk for a future sex offense; that very few adolescent sex offenders appear to have entrenched sexual deviancies; and that despite the dogma about intervention imperatives, none of the approaches often mandated by state sex-offender boards or state standards have ever been evaluated with sufficient rigor to establish that they are, in fact, necessary or even superior to alternative approaches. Perhaps the most important point emphasized is the diversity of the juvenile sexual offender population and the corresponding need to approach each situation on a case-by-case basis, irrespective of charged offense, rather than simply routing anyone accused of a sex offense into one-size-fits-all sex offender programming.

A substantial portion of the book is devoted to analysis of the 1993 National Task Force on Juvenile Sex Offending report (NAPN, 1993). Zimring traces the roots of harsh, adversarial handling of juvenile sex offenders to the recommendations and assumptions offered by this panel. I suspect that the panel report reflected far more about mood of the late 1980s and early '90s than it did anything unique to the panel itself. A confluence of social forces characterized that era, including panic over the assumed pervasiveness and devastation of child sexual abuse, fear of juvenile crime, political correctness, and fear of appearing soft on crime. This was also the era in which "nothing worked," in juvenile justice and the public looked askance at programs that appeared anything but tough and adversarial towards delinquents. Victims, not juvenile offenders, were supposed to be our foremost concern, and concern for victims was thought to be best shown by being tough on juvenile offenders. I suspect some panel members felt it necessary to harden their rhetoric beyond what they actually practice. I doubt that the National Task Force was really the root of the problem. In fact, many members of that Task Force have been very vocal about humanizing our handling of these youth.

One of the central points advocated by Zimring is restoration of case-by-case decision making, including decisions about arrest, prosecution, labeling and mandatory sex offender treatment, and placing these decisions more in the hands of traditional juvenile justice decision makers rather than specialized sex offender treatment experts. This more nuanced approach to dispositions makes good sense, regardless of who is making the decisions. However, it does reveal a key problem. Given the diversity within the adolescent sex offender population, including diversity of risk posed to the community, and the corresponding diversity of responses we should apply, how does one decide what should be done with whom? Unfortunately, this is where our current [*797] state of scientific knowledge reaches its limit and offers little assistance. There are no empirically validated classification, risk assessment or triage systems. A challenge facing the field at the present time is to develop a coherent empirically-derived classification system and actuarial risk

prediction systems that would assist the juvenile court in separating the small number of youth who are acutely dangerous or intransigent from the larger number who are not. Zimring tries his hand at proposing a classification system to assist in this process, but unfortunately we can not hold this to be much more than speculation. The book ultimately concludes that there needs to be a concerted effort to answer these questions scientifically, and on this point I suspect there is little debate. Moreover, the book emphasizes the need to put current adolescent sex offender treatment and plausible alternatives to the test in rigorous scientific trials. To date, these important and necessary efforts have not been a strong priority for federal research funding. Until these problems are solved (and they ultimately can be), decision makers may simply have to rely on soft methods and learn to live with uncertainty. Informed uncertainty is still preferable to misguided certainty.

Zimring concludes by offering suggestions for juvenile court case handling procedures, as well as an analysis of whether and in what ways Megan's law might be applied to juveniles. He correctly notes that neither the risks nor the benefits of Megan's law have been well studied, and we should be cautious about imposing potential risks on minors when the benefits to society are unknown. Public notification laws represent the quintessential unthinking application of adult sex offender assumptions and policies to children and youth. Some states have no age limit on who they will register as a sex offender. Other states have developed far more selective and limited systems. Registration and notification laws may be popular for many reasons. Who would not want to know if they are living next door to a sex offender? Plus, they are cheap and give the impression that something is being done about the problem. We might be concerned that states will engage in a process of ratcheting up the severity of notification requirements each time there is a high-profile re-offense, and that the system will become progressively more draconian. Yet, this does not seem to be happening, or at least not everywhere. Some states that initially had inclusive and longer-term registration systems have begun to make them more selective and limited (e.g., Minnesota, Texas) and some states that only recently developed juvenile registration and notification systems have included sunset provisions and procedures involving considerable effort and case-by-case assessment before imposing registration or notification burdens on youth (e.g., Oklahoma). It may be that the current era is ripe for a re-evaluation of our policies on juvenile sex offenders. If that is so, then this book is timely. I would recommend this book for anyone interested in re-thinking the fundamental questions of how our courts and systems should respond to these cases.

REFERENCES:

Association for the Treatment of Sexual Abusers. 2000. "The Effective Legal Management of Juvenile Sexual Offenders." Position paper. Beaverton, OR: ATSA. [*798]

Becker, J.V. 1998. "What We Know About the Characteristics and Treatment of Adolescents Who Have Committed Sexual Offenses." 3 CHILD MALTREATMENT 317-329.

Center for Sex Offender Management. 1999. "Understanding Juvenile Sexual Offending Behavior: Emerging Research, Treatment Approaches and Management Practices." Silver Spring, MD: CSOM. Available at www.csom.org

Chaffin, M., and Bonner, B.L. 1998. "Don't Shoot, We're Your Children: Have We Gone Too Far in our Response to Adolescent Sex Abusers and Children with Sexual Behavior Problems?" 3 CHILD MALTREATMENT 314-316.

Hunter, J.A., Gilbertson, S. A., Vedros, D., and Morton, M. 2004. "Strengthening Community-Based Programming for Juvenile Sexual Offenders: Key Concepts and Paradigm Shifts." 9 CHILD MALTREATMENT 177-189.

National Adolescent Perpetrator Network. 1993. "The Revised Report from the National Task Force on Juvenile Sexual Offending." 44 JUVENILE AND FAMILY COURT JOURNAL 1-115.

National Center on the Sexual Behavior of Youth. 2003. "NCSBY Fact Sheet

Adolescent Sex Offenders: Common Misconceptions vs. Current Evidence." Oklahoma City, OK: NCSBY. Available at www.ncsby.org

Office of Juvenile Justice and Delinquency Prevention. 2000. "Understanding Treatment and Accountability in Juvenile Sex Offending: Results and Recommendations from an OJJDP Focus Group." Development Services Group, Training and Technical Assistance Division, Inc., 7315 Wisconsin Avenue, Suite 700E, Bethesda, MD 20814.

Righthand, S., and Welch, C. 2001. "Juveniles Who Have Sexually Offended: A Review of the Professional Literature." Washington, DC: OJJDP.

Click to go back to contents