Contributors

Dr Christine Alder
SENIOR LECTURER
DEPARTMENT OF CRIMINOLOGY
UNIVERSITY OF MELBOURNE
VICTORIA

Ms Margaret Allison
DIVISION OF PROTECTIVE SERVICES
AND JUVENILE JUSTICE
DEPARTMENT OF FAMILY SERVICES
AND ABORIGINAL AND ISLANDER
AFFAIRS, QUEENSLAND

Mr Stephen Armitage
DIVISION OF PROTECTIVE SERVICES
AND JUVENILE JUSTICE
DEPARTMENT OF FAMILY SERVICES
AND ABORIGINAL AND ISLANDER
AFFAIRS, QUEENSLAND

Ms Lynn Atkinson
CRIMINOLOGIST
AUSTRALIAN INSTITUTE OF
CRIMINOLOGY
AUSTRALIAN CAPITAL TERRITORY

Mr Paul Bartholomew
FORMER DIRECTOR
YOUNG OFFENDERS SERVICES
WESTERN AUSTRALIA

Professor John Braithwaite
RESEARCH SCHOOL OF SOCIAL
SCIENCES
THE AUSTRALIAN NATIONAL
UNIVERSITY

Judge Michael J. A. Brown
PRINCIPAL YOUTH COURT JUDGE
NEW ZEALAND

Dr Garry Coventry
DIRECTOR, THE NATIONAL CENTRE
FOR SOCIO-LEGAL STUDIES
LA TROBE UNIVERSITY, VICTORIA

Dr Gabrielle M. Maxwell
OFFICE OF THE COMMISSIONER FOR CHILDREN,
AND INSTITUTE OF CRIMINOLOGY, VICTORIA
UNIVERSITY OF WELLINGTON, NEW ZEALAND

Mr David Moore
LECTURER, SCHOOL OF HUMANITIES AND
SOCIAL SCIENCES
CHARLES STURT UNIVERSITY - RIVERINA, NEW
SOUTH WALES

Mr Frank Morgan
DIRECTOR
OFFICE OF CRIME STATISTICS
ATTORNEY-GENERAL'S DEPARTMENT
SOUTH AUSTRALIA

Mr Lawrie Moynihan
YOUTH WORKER
LOGAN YOUTH LEGAL SERVICE
QUEENSLAND

Senior Sergeant Terry O'Connell
DISTRICT TRAINING COORDINATOR WAGGA
WAGGA
NEW SOUTH WALES POLICE SERVICE

Dr Ian O'Connor
HEAD, DEPARTMENT OF SOCIAL WORK & SOCIAL
POLICY
THE UNIVERSITY OF QUEENSLAND

Dr Paul Omojo Omaji
SENIOR CO-ORDINATOR, LEGAL STUDIES, EDITH
COWAN UNIVERSITY
WESTERN AUSTRALIA

Inspector Clement O'Regan
QUEENSLAND POLICE SERVICE

Mr Chris Cunneen
INSTITUTE OF CRIMINOLOGY
UNIVERSITY OF SYDNEY

Mr Vaughan Duggan
MANAGER
JUVENILE JUSTICE SECTION
HEALTH AND COMMUNITY SERVICES
VICTORIA

Mr John Engel
CONSULTANT
YOUTH AND THE LAW PROJECT
NEW SOUTH WALES

Mr Seith Fourmile
ABORIGINAL COORDINATING
COUNCIL, QUEENSLAND

Mr Ross Goodlet
DEPARTMENT OF EMPLOYMENT,
VOCATIONAL EDUCATION AND
TRAINING, WESTERN AUSTRALIA

Mr Ian Graham
DIRECTOR-GENERAL
DEPARTMENT OF JUVENILE JUSTICE
NEW SOUTH WALES

Mr Roger Hearn
POLICY OFFICER
VICTORIAN COMMUNITY MANAGED
MENTAL HEALTH SERVICES (VICSERV)

Ms Cyndia Henty-Roberts
PRESIDENT
DARWIN ABORIGINAL & TORRES
STRAIT ISLANDER YOUTH SHELTER
NORTHERN TERRITORY

Mr Michael Hogan
DIRECTOR
PUBLIC INTEREST ADVOCACY CENTRE
NEW SOUTH WALES

Mr Doug Hubble
DEPARTMENT FOR COMMUNITY
SERVICES, WESTERN AUSTRALIA

Ms Lesley Podesta
DIRECTOR
OFFICE OF YOUTH AFFAIRS
VICTORIA

Dr Kenneth Polk
ASSOCIATE PROFESSOR
DEPARTMENT OF CRIMINOLOGY
UNIVERSITY OF MELBOURNE
VICTORIA

Mr Danny Sandor
CHAIRPERSON 1991-92, YOUTH AFFAIRS COUNCIL
OF VICTORIA

Ms Lynda Saville
JUVENILE JUSTICE OFFICER
NEW SOUTH WALES

Dr John Seymour
READER IN LAW
AUSTRALIAN NATIONAL UNIVERSITY

Ms Charlotte Stockwell
DEPUTY DIRECTOR
WESTERN AUSTRALIAN COUNCIL OF SOCIAL
SERVICE, WESTERN AUSTRALIA

The Honourable Christopher Sumner MLC
ATTORNEY-GENERAL OF
SOUTH AUSTRALIA

Senator the Hon. Michael Tate
FORMER FEDERAL MINISTER FOR JUSTICE AND
SENATOR FOR TASMANIA

Mr Michael Tansky
DIVISION OF COMMUNITY SERVICES
DEVELOPMENT
DEPARTMENT OF FAMILY SERVICES AND
ABORIGINAL AND ISLANDER AFFAIRS,
QUEENSLAND

Ms Sara Thorley Smith
MANAGER
JUVENILE JUSTICE EDUCATION
DEPARTMENT OF SCHOOL EDUCATION
NEW SOUTH WALES

His Honour Judge Hal Jackson
PRESIDENT, CHILDREN'S COURT OF WESTERN AUSTRALIA

Ms Sue Vardon
CHIEF EXECUTIVE OFFICER
DEPARTMENT FOR FAMILY AND COMMUNITY SERVICES
SOUTH AUSTRALIA

Mr Peter Jones
POLICY OFFICER
OFFICE OF YOUTH AFFAIRS
VICTORIA

Mr Reece Walters
RESEARCH FELLOW
THE NATIONAL CENTRE FOR SOCIO-LEGAL STUDIES
LA TROBE UNIVERSITY, VICTORIA

Dr Jon Jureidini
DIRECTOR
ADOLESCENT PSYCHIATRY
ADELAIDE CHILDREN'S HOSPITAL
SOUTH AUSTRALIA

Mr Roger Welsh
SENIOR YOUTH WORKER
DEPARTMENT FOR FAMILY AND COMMUNITY SERVICES
SOUTH AUSTRALIA

Ms Evi Kadar
POLICY OFFICER, MINISTRY FOR POLICE AND EMERGENCY SERVICES
VICTORIA

Associate Professor Kate Warner
DEAN, FACULTY OF LAW
UNIVERSITY OF TASMANIA

Detective Inspector Robert C. Kucera
OFFICER IN CHARGE
YOUTH, FAMILY & ETHNIC AFFAIRS BRANCH
WEST AUSTRALIAN POLICE FORCE

Dr Rob White
DEPARTMENT OF CRIMINOLOGY
UNIVERSITY OF MELBOURNE
VICTORIA

Detective Inspector Ann Lewis
CHILD AND SEXUAL ASSAULTS INVESTIGATION UNITS
QUEENSLAND POLICE SERVICE

Ms Joy Wundersitz
SENIOR RESEARCHER
DEPARTMENT OF FAMILY AND COMMUNITY SERVICES
SOUTH AUSTRALIA

Mr Garth Luke
COMMUNITY AID ABROAD

Ms Julia Young
CONSULTANT
YOUTH AND THE LAW PROJECT
NEW SOUTH WALES

PREFACE

THE NATIONAL CONFERENCE ON JUVENILE JUSTICE HELD IN ADELAIDE IN September 1992 came at a time of high moral panic about juvenile offending. The promise and apparent abundance of the 80s had given way to less palatable realities: debt ridden governments, reductions in services, growing unemployment, and recession. Renewed conservatism at the start of the 1990s went hand in hand with a popular agenda for law and order. Not surprisingly, it was young people, those most victimised by the policies and excesses of the 1980s and the countervailing constraints of the 1990s, who were the focus of the ensuing law and order campaigns.

Such was the mood in Western Australia earlier in 1992 when the *Crime (Serious and Repeat Offenders) Sentencing Act* was passed. The Act targets in particular, juvenile "serious repeat offenders" and promises severe penalties, including mandatory terms in detention. Aboriginal young people, since they are over-represented in the target group, are especially vulnerable to being sentenced under the Act. The climate which gave rise to the passing of the Act[1] is described by Judge Hal Jackson and Ms Charlotte Stockwell in this volume.

For many months the new Act in its draft and final forms generated loud and public national debate. Despite objections from public figures and human rights experts the Act was finally passed. Vocal objections from outside Western Australia then diminished, in some cases to be replaced by curiosity about (and perhaps vested interest in) the practical application of the Act.

The National Conference on Juvenile Justice was thus conceived in a climate of popular concern about rising levels of juvenile crime (a misguided concern as Ms Joy Wundersitz points out in her paper), and an air of anticipation about changes to the administration of juvenile justice. It was time for the quality of the juvenile justice debate to be lifted and for its scope to be redefined.

Dr John Seymour's paper seeks to outline some coherent grounds for rational debate and enduring reforms, by asking some fundamental questions: Is it reasonable to expect the juvenile justice system to provide solutions for wider community ills? What are the specific problems in the current systems? Should we have more or less intervention? Who should be the decision makers? Too often such fundamental questions are ignored by policy makers when the ideas and responses they produce are crisis driven.

---

1 Note that as at November 1993, the WA Government has proposed amendments to the Act, one of which will extend the operation of the Act to June 1994. The WA Government has also foreshadowed the introduction of new legislation relating to juvenile offenders.

The 1980s was a decade of change for juvenile justice in Australia. Previous emphases in the administration of juvenile justice had been on reforming offenders and forestalling offending behaviour in those who showed signs of rejecting law-abiding (white, middle-class, patriarchal) Australian norms. In this "welfare" model of juvenile justice, secure detention and indeterminate sentences were major vehicles for rehabilitative programs. Excesses and injustices occurred within these welfare-based systems, without notable achievements in gaining law-abiding conformity from the systems' clients.

At about this time South Australia led the other jurisdictions in legislating for change to give pre-eminence to the due process of law in the administration of juvenile justice. All Australian jurisdictions, with the exception of Tasmania, now have justice-centred or just deserts-centred juvenile justice legislation. As with previous welfare-based juvenile justice systems, these current systems, as Professor Kate Warner points out in her paper, have their own sets of problems.

Meanwhile, the relationship between due process and welfare philosophies and needs remains one of tension. It has been common practice in Australia to speak of welfare and due process philosophies as if they reflect two mutually exclusive poles, rather than the ends of a continuum along which the juvenile justice policies in our jurisdictions are variably located.

Now, in the 1990s, there is some recognition that a just response to more serious, and indeed to more troubled young offenders requires a multi-dimensional, rather than a polarised welfare or due process, response. Several papers in the present collection describe some practical applications of such a response.

The papers by Dr Gabrielle Maxwell and Judge Michael Brown are concerned with the New Zealand system of family group conferences. Judge Brown delivered his first paper in Australia on family group conferences at an Australian Institute of Criminology Conference in 1985. The family group conference system derives from Maori traditions and cultural values. Since its original conception as a means of providing appropriate sentences and sentencing processes for Maori youth within the mainstream juvenile justice system, it has become the centrepiece of New Zealand juvenile justice legislation and practice. Family group conferences include offenders, their families, and victims, in processes which seek and encourage accountability of offenders as well as their community re-integration.

Dr John Braithwaite's paper provides a theoretical framework for this kind of juvenile justice system response. Senior Sergeant Terry O'Connell and Mr David Moore describe an Australian version of family group conferencing at Wagga Wagga.

The family group conferencing approach to juvenile justice in the 1990s captured much of the discussion at the conference. Amongst the widespread enthusiasm for the principles and practical successes of the New Zealand and Wagga Wagga schemes, concerns were also raised. These concerns included the central coordinating and discretionary role of the police in the Wagga Wagga scheme, the role of families in the scheme when incest or other child

abuse might be involved, and the tendency of the scheme to effectively decriminalise lesser sexual offences, while in the broader criminal justice arena women struggle to have violent acts against them taken more seriously by the courts.

There is concern, too, that the relevance of the system to Aboriginal young people and their communities should not be assumed, simply because the scheme has its origins in the traditions and cultural values of other indigenous people. Aboriginal voices debating the matter have yet to be heard.

Papers were delivered and discussions took place on a wide range of issues relating to young people, crime and justice, resulting in this large volume of conference papers. The interest in family group conferences is testimony to the urgent and widespread desire to find new solutions to old problems. As Dr John Seymour reminds us, however, workable new solutions are unlikely to be independent of an understanding of our particular needs and problems, and of the particular context of the problem. Ongoing informed debate, which this national conference on juvenile justice helped stimulate, is a vital component of the reform process.

Lynn Atkinson
November 1993

OPENING ADDRESS

Michael Tate

THE TOPIC OF DISCUSSION TODAY IS CONCERNED WITH THE MAIN ISSUES IN juvenile justice. From the Commonwealth's perspective and from my perspective as the Minister responsible for the Australian Federal Police and federal sentencing, the issues of prevention of crime and diversion of young offenders are high on our lists of priorities.

There is little doubt that there is broad agreement on the need to keep contact between juveniles and the criminal justice system to an absolute minimum. Many adult criminal careers start with crimes committed as juveniles. However, study after study on juvenile offending has made the point that juvenile offending is often transitory with low rates of re-offending. Juveniles who are institutionalised are far more likely to re-offend.

Courts should be given the widest possible scope to make appropriate sentences and to use imprisonment only as a last resort. For federal offenders judges must now justify their reasons for not using alternatives to imprisonment. Since 1990, federal offenders have had the full range of sentencing options including community service orders, home detention and, for people who are unfit to plead due to mental illness or intellectual disability, magistrates now have a wide range of special bonds. Our commitment to diversion is further evidenced by the 1989 changes to the *Crimes Act 1914* (Cwlth) which introduced a presumption against imprisonment for offenders who illegally obtained money or property worth $2,000 or less.

In 1982 amendments to the Commonwealth Crimes Act came into force which made explicit restrictions on the way in which judges can use imprisonment as a sentencing option. Judges must now be satisfied that no other sentence is appropriate, given all the circumstances of the case. The judge must also provide reasons for his or her decision to incarcerate someone.

Further, to reduce the stigma of conviction for offences by young people so as not to leave a permanent blot on their careers, the Federal Government introduced the "Spent Convictions" legislation in 1989. The scheme provides that in the case of a conviction, subject to limited exceptions, a conviction is spent after five years for juveniles and ten years for adults. This means that the conviction cannot be taken into account in relation to employment and other opportunities. Queensland and Victoria have legislation similar to that of the Commonwealth. All other states are at various stages of implementing spent convictions legislation.

Much of the recent media reporting on juvenile crime has focused on violent crime. People at this conference are well aware that the majority of juvenile offending is directed against property. In 1989-90 juveniles were responsible for over 40 per cent of convictions for all break, enter and steal offences in all but two jurisdictions. Similarly, juveniles were responsible for up to 49 per cent of all motor vehicle thefts in half of the states in 1990-91 (Australian Institute of Criminology, unpublished data). The broad picture for crimes of violence is, however, markedly different.

The Youth Justice Coalition has found that young people do not appear significantly in offences against the person, firearms related offences and sexual offences. In Victoria for example, only 9 per cent of all serious assault charges cleared by police in Victoria were committed by juveniles.

That is not saying, however, that there is not a problem with juvenile offending.

Potas et al. (1990) in a study for the Australian Institute of Criminology on young people and crime, found that when one combined the evidence in official statistics, crime surveys and victim surveys, offending by young people was "widespread and ubiquitous". There is a concern in the community about youth violence and personal safety which should not be ignored. This concern cannot be explained away as being a media beat up or a moral panic and it must be addressed in our discussions about the major issues in juvenile justice.

I would now like to elaborate on the Commonwealth's position on a few of the issues which will be discussed at the conference.

Young People as Victims of Violence

I will start at what I consider to be the root of violence in our community. The National Committee on Violence (NCV) was established in 1987 to inquire into the causes of violence in the community and to develop strategies to prevent and control it. The report of the Committee stated categorically that "families constitute the training ground for aggression" (National Committee on Violence 1990).

Children who are subjected to physical, sexual and emotional abuse are likely to perpetuate what is commonly termed the "victimisation cycle". Families are where aggressive behaviour is first observed or experienced. Moreover, the NCV asserted that abusive parents tended to be abused or neglected as children. The need to confront violence in the home to prevent young people from becoming victims and perpetrators of violence has to be one of the starting points for crime prevention. The recent report in Victoria by Dr Rosemary Wearing (1992) on the attitudes of police and magistrates to domestic violence orders revealed a substantial reluctance to confront violence in the home. This is especially disturbing given that one third of domestic homicides are in the home and the chilling fact that the Australians most at risk of homicide are under the age of one.

In response to this, parenting skills programs are being established in every state. The National Committee on Violence against Women has embarked on a community education program over the past year which will

continue to 1995. The program reinforces the idea that violence against women is a crime. Over $3m has been dedicated to this program. Over $4.5m had been earmarked for violence intervention programs in Aboriginal communities. The money will be administered through the Aboriginal and Torres Strait Islander Commission (ATSIC).

The scope of the victimisation of young people is not yet known, but it extends way beyond the frequently reported story of children who are physically assaulted by youth gangs for their Reeboks. In a recent Commonwealth sponsored study by the National Youth Affairs Research Scheme on young people as victims of violence (Halstead 1992), it was found that young people are reluctant to report incidents of violence.

In part this is due to young peoples' relationships with police, fear of peer group reprisal for reporting violent acts, and also a sense of having contributed to the incident. The National Youth Affairs Research Scheme report makes a series of worthy recommendations on the need for further development of youth services for victims of violence and the need to improve relationships between police and youth, especially Aboriginal and Torres Strait Islander youth. I am sure debate on these issues will be generated at this conference.

The next theme I would like to talk about concerns strategies of crime prevention for young offenders.

Crime Prevention and Young Offenders

Some commentators are of the view that the 1980s decade of change for juvenile justice seems to have been overtaken in the 1990s by a public backlash against young people. The concern is not only with perceived or identified juvenile offenders, but also with youth who congregate in public places. Groups of young people are often perceived as threatening public order and safety.

This can lead to the introduction of harsh laws. For example, in 1989 in reaction to community fears about public violence, the police were given powers in the Australian Capital Territory to force people to move out of a public place if they considered those people were about to engage in violent conduct. Subsequently, it was felt by many people that they were unable to use public space without being intimidated. The stated motivation for these provisions was not to intimidate and harass young people. However, it is obvious that the law is aimed at clearing young people from the streets. It also gives police the opportunity to administer hefty fines to young people which they might not be able to pay.

I was highly critical of the provisions at the time. I note that the original provision's sunset clause has been extended for another two years. The public now seems less concerned about the possible negative effects of the criminal justice system on young offenders than with perceived threats by young people to personal and community safety and property.

In line with the Government's thinking about keeping to a minimum young people's contact with the criminal justice system we have started to develop crime prevention policies which recognise that most juvenile crime is

transient, and that there is a need to integrate offenders through education and employment programs, and community involvement. This is opposed to the short, sharp shock theories of exposure to the criminal justice system, which have received some support in some jurisdictions.

Examples of the Government's initiatives in preventative techniques are provided in a report by Coventry et al. (1992) in their evaluation of projects which were funded through the Department of Education, Employment and Training as part of the Australian Youth Initiatives Grants Scheme. Nine youth crime prevention projects were established in six Australian states. The government chose these projects on the basis that they would encourage youth participation and provide services to disadvantaged youth. I will not go through all the projects but I would like to bring some of them to your attention to provide you with a broad overview of their direction.

The South Sydney Youth Service is a community support scheme for young people who have come from institutional care. It is based on an early positive intervention philosophy. The program is based on the thinking that young people need community support which includes providing assistance with accommodation, employment, counselling, and training upon release. This program has attracted favourable comment from the New South Wales Government for its pro-active approach. It has been very successful in attracting young women who are often not well catered for in other programs.

The Central Reserves Crime Prevention Program targets young Aboriginal people across the vast Warburton ranges in Western Australia, where there is a high rate of criminal activity associated with petrol sniffing. The project aims to provide suitable mentors to reinforce appropriate behaviour and to offer family support for those who inhale petrol and other solvents. The mentors are given responsibility for the adolescents. This culturally specific approach has received strong community support.

The Hindmarsh Industrial Training Project is a practical program for young offenders to undertake fourteen weeks of structured skills training in a metal fabrication workshop. It is an attempt to prevent crime by providing young offenders with work skills. Participants manufacture metal goods for sale in the local community. The project is based on an educational, employment and training model.

These types of Australian Youth Initiative Grant Programs illustrate the cooperative approach which the Commonwealth Government has adopted to crime prevention. All three spheres of government are involved, as is the business sector and the community. These initiatives emphasise the importance of program accountability and the need to base social policy on comprehensive evaluation and research.

The Australian Community Safety Council (ACSC) is a development arising out of the joint agreement of the Australasian Police Ministers' Council (APMC). The plan is to develop a national framework which integrates crime prevention structures in states and territories and community spheres. In July 1992, the APMC met as the interim Australian Community Safety Council and endorsed the outline of a national strategy. It also resolved to hold a national conference on community safety and crime

prevention in November 1992, which I will chair, as a means of bringing together relevant sectors of government and the community to consider how the national strategy should be advanced.

One of the aims in endeavouring to establish the Australian Community Safety Council is to seek out and develop models of best practice in crime prevention. By sharing information about models of crime prevention, states can be put in the best position to evaluate which programs are most suitable for their own circumstances. The premises underlying the ACSC's formation are that crime prevention cannot continue to be regarded as the sole responsibility of law enforcement agencies and that effective approaches to crime prevention and community safety must involve partnership between those agencies, social policy makers and service providers as well as business and local communities.

I believe that the ACSC has considerable potential to embrace juvenile justice issues within a coordinated national approach to crime prevention. As an example of the types of activities which we envisage the ACSC endorsing, the Federal Justice Office of the Attorney-General recently sponsored a half-day seminar at Wagga Wagga, where presentations were made by Dr John Braithwaite (The Australian National University), Mr David Moore (Charles Sturt University) and Senior Sergeant Terry O'Connell (New South Wales Police). The Federal Justice Office was informed about how the New Zealand diversionary model which Justice Brown will no doubt be discussing this morning, has been adapted for Australian use.

Under the Wagga Wagga scheme, once a young person has been caught committing an offence by the police, a community conference is held. Representatives of the victim and the parents of the offender are invited to attend. A contract is often made for some form of restitution to the victim. This type of community model may be of interest to other states and once the ACSC is established, information on these types of diversionary programs will be more readily available.

Time does not permit me to discuss more widely the Government's $100m Youth Justice Strategy, which has attempted to redress some of the conditions which bring young people into contact with the juvenile justice system. While I should stress that the Commonwealth's youth justice strategy is not pitched solely in terms of crime prevention, it can be seen as a serious undertaking by the Government to deal with the social and economic factors associated with youth offending. Similarly, while the national strategy on Community Safety and Crime Prevention will not focus only on concerns for and about young people, these concerns have been considered in the development process.

Before I conclude, I would like to put forward the Commonwealth's position on what will certainly be an issue raised at this conference, and that is, the Western Australian juvenile justice amendments.

The Western Australian Juvenile Justice Legislation

The Commonwealth not only has obligations to its constituency in Australia, it also has international obligations to juvenile offenders through the

International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention on the Rights of the Child.

The *Crime (Serious and Repeat Offenders) Sentencing Act 1992* was introduced in response to legitimate concerns about numerous serious high-speed motor accidents with juveniles, some of which resulted in death and serious injury. In commenting on this legislation I am in no way wanting to diminish the tragedy of those accidents or my disapproval of the behaviour which caused these injuries. Nevertheless, the approach of the Western Australian Government has left open some serious questions.

The laws which were mooted were so harsh they prompted the Attorney-General, the Honourable Michael Duffy, to express his concerns that provisions of Western Australia's *Crime (Serious and Repeat Offenders) Sentencing Act* could breach the ICCPR and the United Nations Convention on the Rights of the Child.

While not specifically targeting Aboriginal juveniles, it was also feared that the Western Australian law ran counter to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. In particular the areas in which the Western Australian legislation appeared to breach our obligations under the ICCPR and the United Nations Convention on the Rights of the Child are:

- The lack of any explicit guidance for Supreme Court judges on the review of periods of mandatory detention for juveniles, which may breach the arbitrary detention provisions of article 9 of the ICCPR;

- The provision of a mandatory sentence of imprisonment or detention of eighteen months for certain offences by juveniles may breach article 37(b) of the Convention, which requires that detention or imprisonment be used only "as a measure of last resort and for the shortest appropriate period of time". It is also inconsistent with the requirement in article 40(4) for a range of sentencing options. Furthermore, if the rights in the Convention are seen as individual rights, a minimum of eighteen months imprisonment could be a breach of the obligations to consider individual cases on their merits;

- The legislation is ambiguous about whether it is intended to enable young offenders to be detained or imprisoned in adult prisons. Detention or imprisonment of children in adult prisons is not permitted by article 37(b) (other than in remote areas for which there is a reservation to Australia's ratification of the convention).

In respect of Mr Duffy's correspondence, he was advised that the legislation was to be placed before the Legislation Committee of the Western Australian Legislative Council. The Committee prepared two reports and noted that the legislation breached the spirit and letter of the ICCPR and the Convention on Rights of the Child, and that it ran counter to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. It also called for the reconsideration of the legislation.

The Western Australian Government has given assurances that the Western Australian Minister for Justice, Mr Smith, will bring to Cabinet recommendations to amend the legislation. It remains to be seen if this will satisfy Commonwealth concerns.

I hope that this conference provides a fruitful forum to discuss these issues and I will be particularly interested to hear about the development of diversionary strategies.

I take great pleasure in officially opening the conference.

References

Coventry, G., Muncie, J. & Walters, R. 1992, *Rethinking Social Policy for Young People and Crime Prevention*, National Centre for Socio-Legal Studies, La Trobe University, Melbourne, Victoria.

Halstead, B. 1992, *Young People as Victims of Violence*, National Youth Affairs Research Scheme, Department of Education, University of Tasmania, Hobart.

National Committee on Violence 1990, *Violence: Directions for Australia*, Australian Institute of Criminology, Canberra.

Potas, I., Vining, A. & Wilson, P. 1990, *Young People and Crime*, Australian Institute of Criminology, Canberra.

Wearing, R. 1992, *Monitoring the Impact of the Crimes (Family Violence) Act 1987*, La Trobe University, Melbourne, Victoria.

Youth Justice Coalition (NSW) 1990, *Kids in Justice: a Blueprint for the 90s*, full report of the Youth Justice Project, Youth Justice Coalition, Sydney.

PREVENTING JUVENILE CRIME

The Honourable Christopher Sumner

FRANKLIN D. ROOSEVELT ONCE SAID IN A SPEECH TO THE UNIVERSITY OF Pennsylvania:

> We cannot always build the future for our youth, but we can build our youth for the future.

When he made that statement in 1940, the future did indeed look bleak. Most western industrialised countries had, only a few years before, struggled through the great depression and the United States was on the brink of entering World War II—the future of the entire world was both grim and uncertain. In fact probably much more uncertain than the circumstances of 1992.

Again in 1992, community expectations are such that we must give attention to building Australia's youth for the future. In this governments can and do assist, but the very clear message that needs to be heard now is that caring for our young people, and building the citizens of the future is not just a responsibility of government but one which must be accepted by everyone in the community—most importantly by parents and family, but also by industry, teachers, councils, governments, the church, and so on.

It is important for governments to acknowledge that they have an important role to play in creating the right economic and social climate for young people to feel that the future holds promise and that they will eventually have not only a responsibility for themselves but a stake in the future of the nation.

It is worth noting that even given the difficult economic situation and unacceptable levels of unemployment, for the majority of young people, the government is partly fulfilling its role. In the past ten years, school retention rates have increased dramatically. Now, more than ever, young people are completing their secondary education and going on to achieve some form of tertiary education or post-secondary training.

However, there is a significant number of young people who are slipping through the cracks, who do not fit into the education system and who cannot find employment. Some of these young people may then turn to alcohol and drugs which often leads to crime.

In too many cases, young people have been given an appalling start to life and from a very young age have been confronted with their own private wars. Domestic violence, child abuse, alcohol and drug abuse, a breakdown

in core values and youth unemployment, have all contributed to many young people believing they have no real or useful contribution to make to society.

Many young people have left home and taken to the streets and become bored, they often feel disenfranchised and angry, and they have little or no confidence in their future. They turn to whatever is available to get their thrills—which more often than not involves street crimes, such as stealing and vandalising cars or other property, getting involved in high-speed car chases and the like.

It is, of course, generalising to say that all young people who commit crimes come from this background, given that peer group pressure plays a role, as does youthful larrikinism, immaturity, a tendency by some young people to believe in their own immortality and lack of understanding about the consequences of their actions. These young people generally only come into contact with the criminal justice system once. They represent the majority of youths who come into contact with the justice system.

Rising crime rates, and in particular, juvenile crime, has become a major issue in our community in the past decade. It has been prompted in part by a growing concern in the community that traditional values are being eroded by family breakdown, substance abuse, and an acceptance of violence as a means of entertainment. But it has also been prompted by people tired of their cars being stolen and wrecked, tired of their houses being broken into and tired of seeing graffiti on public and private property. The concern has also been generated by a fear of crime in the community, especially among the elderly who are in fact least likely to be the victims of crime.

It is obvious that the criminal justice system alone does not and will not close the cracks through which many young people have slipped into a life of criminal activity. No government can legislate to alter personal morality or change the way parents raise their children. Indeed, earlier this year I, as Attorney-General, introduced into the South Australian Legislative Council a Bill to ensure that in some circumstances, parents are at least made liable for the criminal behaviour of their children, but even that failed to get through.

Philosophy of the Crime Prevention Strategy

If we are to make a genuine impact on crime rates which have been rising in every western industrialised nation in the world since the second World War, a different approach is necessary—an approach that is community based and relies on the cooperation of a broad cross-section of that community.

This is the basis of the South Australian Crime Prevention Strategy, which last month completed the third year of its five-year implementation phase.

Though at this stage, one is reluctant to point to specific statistics which prove the worth of the strategy, early indications are that crime prevention measures may be starting to have an impact on crime and anti-social behaviour in this state. The program will be evaluated at the end of its five year term. However I am firmly of the view that some broad-based community crime prevention must supplement the traditional enforcement responses.

The South Australian Crime Prevention Strategy was the first comprehensive strategy of its type in Australia, and remains the leader and model for subsequent crime prevention programs established in other states.

The launch of our strategy followed an extensive examination of evolving schemes in the United Kingdom, Western Europe, and North America.

In August 1990, the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders passed a comprehensive resolution on preventing urban crime. In the preamble to that resolution Congress delegates from more than 140 nations unanimously expressed their conviction:

> That, a successful program to reduce crime cannot be based solely on the Police and Criminal Justice System and that it must be matched by an active prevention policy which includes means of reinforcing common values, so that personal and community responsibility regarding crime is acknowledged, as well as social and community development programs and, the reduction of opportunities for offending.

This resolution reflects both the importance of traditional methods of law enforcement as well as the value of dealing with crime and anti-social behaviour through preventative means. These include designing out crime by more innovative housing and urban planning, by reducing the opportunity for crime, and by reinforcing common values of personal, as well as community responsibility.

The resolution also went on to emphasise the importance of institutions in society and the role of citizens. In particular, it noted:

> That it is the task of Government and other sectors of society to facilitate the development of local and national prevention programs, that prevention must bring together those with responsibility for planning and development, for the family, health, employment and training, housing, social services, leisure activities, schools, the police and the justice system, in order to deal with the conditions that generate crime.

The sentiments which underline the unambiguous consensus support of this resolution on preventing urban crime were that:

- just spending money on the criminal justice system is not on its own going to be effective—and this is clear from the experience in all western industrialised nations—those with which we like to compare ourselves;

- no matter how much is spent on law enforcement or how rapidly courts commit offenders to prison, crime will continue to grow unless the enforcement and deterrent effect of the law is supplemented by prevention initiatives;

- the community has an important role to play—in both reinforcing the core values of society, as well as developing programs which respond to locally defined crime problems.

The Crime Prevention Strategy in this state was allocated $10 million over a five-year period—but it is not primarily about money and budgets—it is essentially about building a safer community.

The strategy does not exist on its own. It is an essential and critical supplement to the criminal justice system.

Current Status of Juvenile Crime in South Australia

In order to deal effectively with youth crime, it is vital that an idea of the true extent of youth criminal activity and its ramifications are known. Currently in South Australia, a parliamentary select committee is looking into the juvenile justice system.

Its terms of reference are to examine:

- the *Children's Protection and Young Offenders Act 1979* and the effectiveness of its operation;
- the administration of the Children's Court;
- the resources devoted to the juvenile justice system and their effectiveness;
- the adequacy of custodial and non-custodial programs for juvenile offenders and the extent to which the services provided by government agencies and the Children's Court can more closely be integrated;
- the problems of truancy.

The greatest cause for concern, and one which the Select Committee is targeting specifically, is the recidivist offender. While the current South Australian Children's Justice System works for most young offenders, it is the repeat offenders and the way the system deals with them which poses the greatest problems and greatest challenges.

Within the Office of Crime Statistics submission to the Select Committee, some interesting results emerged. In the past decade, one in five South Australian children aged between ten and seventeen have appeared before a Children's Court or Aid Panel. But 65 per cent of these children come into contact with the justice system only once.

Of the remaining 35 per cent, less than 5 per cent appear more than four times. What we are left with then is a hard-core group of about 300 young people throughout the state who appear in court again and again. Aboriginal young offenders, most of them males, are disproportionately represented in these statistics. More than half the Aboriginal youth population have had contact with the juvenile justice system in the past ten years compared to 21 per cent of the total youth population.

The report also found that:

- approximately one in ten girls and three in ten boys appear before an Aid Panel or Children's Court;
- approximately 5 per cent of offenders were responsible for a third of the offences dealt with by an Aid Panel or Children's Court;
- fourteen was the most common age for children to make their first court or panel appearance;
- less than 1 per cent of the juvenile population is involved in a serious crime of violence.

Proportionately, the percentage of young people who come into contact with the juvenile justice system has increased only marginally in the past twenty years.

By contrast, the number of juvenile offenders incarcerated has decreased dramatically. For instance, in 1972-73, the number of youths in detention was 247—and in 1991-92, that figure has dropped to sixty-three. The trend has been a healthy one given the assumption that incarceration is unlikely to prevent recidivism and in fact, has undesirable consequences by confirming people in a criminal sub-culture.

There is also no evidence that juvenile crime is increasing at a faster rate than adult crime. The juvenile proportion of apprehensions peaked at 53 per cent of apprehensions for selected offences in 1981-82. In 1978-79 that figure was 39 per cent and in 1990-91 it was 45 per cent. The most striking evidence of a decrease in the juvenile percentage of apprehensions appear from an analysis of break and enter offences where juveniles made up 69 per cent of offenders in 1981-82 and ten years later, in 1990-91, dropped to 49 per cent. It is also the case that juveniles are far more likely to be involved in property offences than in crimes of violence against the person.

The extent of juvenile offending is not an exclusively Australian phenomenon. Studies in other countries show that the prevalence of juvenile contact with the justice system is also high. One of the Philadelphia (USA) cohort studies shows that 33 per cent of boys had a recorded police contact by the age of seventeen (Wolfgang et al. 1972). Other studies from the United States have recorded contact rates for juvenile boys of 46 per cent and 48 per cent (Shannon 1988).

The Cambridge Study in Delinquent Development (UK) shows that of a sample of juvenile boys in London, 31 per cent had recorded a conviction by the age of twenty-one (West & Farrington 1977). Similarly the Swiss "Project Metropolitan" study shows that 31 per cent of juvenile boys had been recorded as having police contact by the age of twenty-five (Wikstrom 1991).

Comparative figures for South Australian juvenile boys are that 26 per cent of all those born in 1962, and 29 per cent of boys born in 1972, appeared before a Children's Aid Panel or Children's Court (Gardner & Morgan 1992).

There is no doubt that young offenders have been and always will be treated differently by the justice system. In South Australia, we have in place a juvenile justice system that I believe generally has worked well in dealing

with the majority of offenders. But there is no doubt that it does not deal adequately with the recidivist offender and issues relating to such problems are now being examined by the Parliamentary Select Committee.

Since 1982, South Australia has had a three-tier system of juvenile justice, comprising Screening Panels, Aid Panels and the Children's Court. The Screening Panel and Children's Aid Panel, which both consist of a members of the police force and an officer of the Department of Family and Community Services, are informal in nature. The severity of an offence and any prior offending are scrutinised by the Screening Panel before a decision is made as to whether any action be taken, that the young offender be given a police caution, or that they should appear before an Aid Panel, or the Children's Court. The majority of offenders referred to the aid panels are first offenders, while a juvenile who has previously appeared before an aid panel may be referred to the Children's Court.

The Aid Panels exclude legal representation, but require that the juvenile's parents or guardians be present. They cannot determine guilt or innocence, so the youth must first admit the allegation to appear before the panel. The panel can then request the youth and/or guardian to undertake, in writing, to comply with its directions as to any training or rehabilitative program for a period of no less than six months. Under certain circumstances, the panel can also refer a matter to the Children's Court.

The Children's Court is, in effect, a modified magistrates' court that operates under the Children's Protection and Young Offenders Act, which provides for a range of sentences. A juvenile can be fined, sentenced to a period of detention, be made subject to a court order to make good the damage they have caused, and pay compensation to their victims.

Victims of crime have become a prominent feature of the criminal justice system in South Australia, which is a direct response to the growing rates of victimisation generally. South Australia has introduced in the past few years a Declaration of Victims Rights which give victims greater rights within the criminal processes. Courts are also required to consider victim impact statements in sentencing so that the sentencing judge can take into account the effect of the crime on the victim when considering a sentence. The greater emphasis on victims within the system has now lead to a proposal for conferences between the offender and the victim, in which young offenders are brought face to face with their victims in order to fully understand the impact of their crime on others.

All of this, however, brings us back to the question of what is the best and most balanced approach we can take in determining an effective juvenile justice system. What we should be asking ourselves is whether the system is properly balanced between a justice model, based on the belief that young offenders are held responsible for their actions and that punishment will deter future offending, and a welfare model, which emphasises the need for care and rehabilitation rather than punishment. Theories about juvenile justice ebb and flow between the two models, although the community concern about crime and particularly juvenile crime means that there is now a need to reassess the appropriate balances. In the case of the recidivist offender, there is no doubt that the community feels that the welfare model

has failed and that the justice and deterrent model must be given greater prominence. It is this problem of the recidivist offender which should occupy the discussion at this conference.

However, the main point I wish to make is that a preoccupation with the criminal justice system in dealing with juvenile offending is a mistake. Even if the justice and deterrence model achieves greater prominence, that on its own will not resolve the problem of juvenile offending. The fact is that the community's expectations of the criminal law and the justice system in being able to adequately deter and reduce the rate of offending, is too high.

Crime Prevention

What then can be done, in addition to reforming the criminal justice system, to reduce the rate of offending in the meantime? The South Australian Crime Prevention Strategy is an attempt to divert young people away from criminal activity.

Part of South Australia's Crime Prevention Strategy has involved establishing twenty-two crime prevention committees, around the state. Each of these committees, made up of a broad cross section of the community, including at least one member of the police force, have been devising and implementing community crime prevention plans that target the specific problems that lead to crime in their area. Many of these programs relate directly to young people—they are aimed at finding out why they are offending and what can be done to stop that offending, and reducing the opportunities for the offending to occur.

The Crime Prevention Unit is also, in one of its exemplary projects, looking at young offenders, tracing their family backgrounds, looking at the contact they have had with government agencies and developing intervention strategies which suit this type of offender.

Specific Youth Programs

Other programs sponsored by the Crime Prevention Unit in cooperation with other government agencies and organisations have also been looking at particular youth problems. One of the most successful programs is taking place in Port Augusta, where crime rates among young Aboriginal people had become a major problem. In response to this problem, the Crime Prevention Unit and Family and Community Services Department jointly funded a two-year project, the "Country Aboriginal Youth Team".

The project, which began in April last year, has been diverting many young Aboriginal people away from crime and finding activities to relieve their boredom. With the help of service clubs, local land owners, and community groups, these young people are now taken on camps, hiking and fishing expeditions, provided with art and craft activities, given projects to paint water tanks, and so on. The results are encouraging. In the short term it appears that Aboriginal youth offending has dropped significantly since the program began. The juvenile crime rate in Port Augusta will need to be

monitored over a longer time to draw definite trends, but initial results demonstrate the potential of crime prevention.

In the inner city area of Adelaide, a Youth Support Group, made up of a team of youth workers, was involved in close liaison with police at Bank Street in a project designed to divert young people away from the criminal justice system. A youth officer was also appointed to work in with all youth agencies and the police in ensuring better cooperation between the two. Other activities have been developed as part of the program:

- The project officer is also working with traders in demonstrating how to prevent shop-lifting and how to deal with potential offenders entering their premises.

- Young people are being consulted about the recommendations of an urban design report which looks at the inner city area and seeks to make design changes to prevent graffiti and vandalism.

- A strategy is being developed to alter community perceptions of young people and crime which is based on a youth cultural event in which the arts, music and drama are used to enable people to speak out about their perception of crime prevention. Young people are very much involved in this project and the name—the Youth Participation Project—reflects not only their participation but their ownership of it.

An evaluation of the cautionary diversion project in the Bank Street region has shown that prevention of juvenile offending, in that instance, was very effective. Police complaints reduced substantially in the area, as did the rate of offending and anti-social behaviour.

In late July this year another innovative program, jointly funded by the Crime Prevention Unit and the Bicentennial Youth Foundation, known as Street Legal, was officially launched. This program works with young motor vehicle theft offenders. It aims to provide young offenders with the opportunity to be involved in a structured, positive way in developing their mechanical and driving skills. It means their desire for car racing can be satisfied, while at the same time problems associated with their life experiences can be addressed. It also provides a pathway to training and employment opportunity and encourages meaningful recreation by way of legal car racing with the cooperation of the Confederation of Motor Sport.

The success of Street Legal speaks for itself. Of those involved so far, only 15 per cent have re-offended, and three out of the four youths who did re-offend have since obtained full-time employment, which in itself indicates the program is capable of both short and long-term success. It is interesting to note that local car manufacturers even requested the assistance of Street Legal participants to examine and assess new vehicles for their locking devices.

Another success story has been the formation of a group in the western suburbs known as Spraygraffix. With funding from the Crime Prevention Unit, this program encourages young people who would normally be

involved in illegal graffiti activity into meaningful, legal and paid projects which require their artistic skills. So while penalties for graffiti have risen substantially this year, and young people have been banned from carrying graffiti implements in public places, there have been programs that divert these potential offenders into legal activities. One example is the giant mural on the E&WS tank at Ingle Farm, organised by the Ingle Farm Youth Action Group and funded by the Crime Prevention Unit through the Salisbury Crime Prevention Committee. The mural involved 500 students from eight schools—and served to increase awareness of the cost of graffiti, as well as the issue of young people and crime generally.

Traditional Enforcement

While these programs are a good start, it is also the responsibility of government to ensure that the recidivist offender must bear some responsibility for his or her actions. Police, courts and corrections must remain the cornerstone of the criminal justice system—and a crucial part of the deterrence of criminal activity.

In South Australia at the beginning of 1991, maximum fines that may be imposed on young offenders were increased from $500 to $1,000, and the maximum compensation payable by a young offender was increased from $2,000 and $10,000. Also, the powers of the Children's Court to impose community service orders was increased so that the court could impose orders on young offenders to make good the damage they caused, such as cleaning up graffiti and so on.

More youths are also being given detention sentences. In the six months ending in December 1991, there was a 50 per cent increase in the number of youths placed in detention. In addition, there were 192 youth offenders in the same period who were ordered by the courts to pay restitution to their victims, which averaged out to about $178 that each of them paid in compensation. In the past year, there is no doubt the Children's Court has begun to impose much stiffer penalties, including lengthy terms of detention, on recidivist offenders. But it must be emphasised that these "justice" initiatives must be reinforced by prevention.

As crime prevention becomes more entrenched in our society, as it is becoming throughout the world, the author is optimistic that long-term achievements will have an effect in levelling off and eventually reducing crime rates.

Crime prevention is still in its embryonic stages in Australia. In Victoria, for instance, it was only in March this year that the Premier Joan Kirner announced that a crime prevention system based on what is being done here in South Australia, will be trialed in about five inner suburban communities. More significantly, in Melbourne in November last year at a conference on Local Government and Crime Prevention, the Commonwealth Office of Local Government and the Australian Local Government Association endorsed a cooperative approach to crime prevention. The conclusion of that conference was that crime prevention be viewed by local government as part of an overall approach to creating safer communities and be integrated into a total

planning approach. Further to this endorsement, the Federal Justice Minister for Justice will chair a working conference in November (1992) which will attempt to lay the foundations for an Australian Crime Prevention Policy.

However, it must be emphasised, crime prevention can only be effective if it has the endorsement and active support of local communities. As a concept, crime prevention is obviously desirable. Transposing that concept into practical use, to reduce crime and in particular, youth crime, is an enormous job. It is a task that we must all face, together.

Conclusion

This conference, large and diverse as it is, offers Australians a unique opportunity to examine the experiences, successes and failures of the juvenile justice systems in our respective states. Increasing crime rates are a perplexing social and psychological problem for all western industrialised nations. The conference is in response to increasing community concern about whether the juvenile justice system is working. It is being held in an atmosphere where there is pressure to redress the balance to some extent away from the welfare model towards the justice or deterrence model for dealing with young offenders. But whatever we do to change the criminal justice system, must be supplemented by effective crime prevention initiatives.

References

Gardner, J. & Morgan, F. 1992, *Juvenile Justice 1*, Attorney-General's Department, South Australia.

SA Office of Crime Statistics 1992, submission to the Parliamentary Select Committee on the Juvenile Justice System, South Australia.

Shannon, W.W. 1988, *Criminal Career Continuity: its Social Context*, Human Sciences Press, New York.

West, D.J. & Farrington, D.P. 1977, *The Delinquent Way of Life*, Heinemann, London.

Wikstrom, P. 1991, *Urban Crime, Criminals and Victims; the Swedish Experience in Anglo-American Perspective*, Springer-Verlag, New York.

Wolfgang, M., Figlio R. & Sellin, T. 1972, *Delinquency in a Birth Cohort*, University of Chicago Press, Chicago.

JUVENILE JUSTICE: THE NEED TO ASK THE RIGHT QUESTIONS

John Seymour

THIS PAPER IDENTIFIES CERTAIN FUNDAMENTAL QUESTIONS WHICH MUST be addressed by those concerned about the design of procedures for responding to offences by the young. The aim is to draw attention to a number of key issues to be considered when examining the objectives of the juvenile justice system and our methods of pursuing them.

What Objectives can the System realistically pursue?

This, the most fundamental question of all, is the one which is usually ignored, either because the answer is thought to be obvious or because the provision of an answer proves embarrassingly difficult. From one perspective, the answer *is* obvious: the system's purpose is to control and prevent juvenile crime. Yet uncertainties emerge as soon as this response is closely analysed. It is naive to view the level of youthful crime in Australia as a function of the operation of the various state and territory juvenile justice procedures. The system lacks the capacity to make the young law-abiding or to ensure that our streets will be safe. We do ourselves a disservice if we fail to recognise that police, courts and welfare services are no more than elements in the complex pattern which is Australian society. It is the nature of this society which we must study, in order to understand the sources of juvenile criminality and to fashion effective methods of dealing with it.

Some years ago, Allen warned of the danger of turning the criminal justice system into a "weary Atlas" which is expected to bear a disproportionate share of a society's problems (Allen 1964, p. 4). This warning has particular relevance today: family poverty, youth homelessness and high levels of unemployment will invariably have a much greater impact on youthful behaviour than will any of the components of the juvenile justice system. It is unrealistic to expect that the introduction of such changes as the addition or removal of panels or the manipulation of penalty levels will be directly reflected in changes in crime rates. Reforms to the juvenile justice system cannot counteract the powerful social and economic forces which produce much juvenile crime. Yet this obvious point is too often ignored.

Tinkering with the system can become a comforting diversion; legislative and procedural changes give the illusion of progress. They can all too easily become substitutes for more radical action.

It might be thought unhelpful to raise questions about the ultimate aim of prevention. Perhaps we should concentrate on the more immediate problem posed by the conflicting perspectives embodied in our procedures for dealing with young offenders. This is not the place to re-examine the tension between the methods of a child welfare system and those of a criminal justice system. Much has been written on this topic (*see* for example, Australian Law Reform Commission 1981, pp. 69-75; Victoria, Child Welfare Practice and Legislation Review 1984, pp. 358-61; Seymour 1988, pp. 162-71, 429-37; New South Wales Youth Justice Coalition 1990, pp. 35-44). There is no simple answer to questions relating to the proper balance between the juvenile justice system's twin concerns of law enforcement and social engineering. It is fruitless to seek to decide whether young offenders should be viewed as victims or threats. Suffice it to say that the system is characterised by ambiguity of aims; it has been described as "a meeting-place of two otherwise separate worlds". As a result, it is "inherently unstable" (Harris & Webb 1987, pp. 9 & 30).

Reform of the juvenile justice system must reflect a recognition of this in-built ambiguity and instability. The purposes which underlie any change must be made explicit. Further, the reformer must make a conscious choice as to whether the goals of the law enforcement officer are to be emphasised or those of the social scientist. While frequently the result will be a mixture of these goals, this is no excuse for the making of changes which betray a failure to identify the ingredients of the mixture. In short, change must be based on the reasoned pursuit of clearly articulated objectives.

What are the Problems with the Existing System?

Like the first question, this might seem an obvious one. As this and many conferences which have preceded it have demonstrated, our level of uncertainty about how to respond to youthful crime is high. This is a product of the above-noted ambiguity of aims; given the contrasting perspectives reflected in the system, it is inevitable that observers will emphasise first one perspective and then another. Some will criticise the system for ignoring the demands of law enforcement and some for failing to fashion responses to offenders' underlying personal problems. The result is a tendency to think in terms of pre-conceived answers rather than questions. Changes are seized on and implemented, but these are often derived from fixed assumptions rather than from a search for responses to open-minded enquiries. To put it another way, the method of proceeding tends to reflect ideology rather than empiricism.

It has been suggested that lawyers now occupy the high ground in debates about the reform of Australia's juvenile justice system (Seymour 1988, p. 431). Their contributions—and hence their attitudes—have been very influential in determining the nature of the changes which have emerged from recent enquiries into the operation of the system. By reason of their training, lawyers tend to think in terms of broad principles and institutional

models. For example, they believe in due process, proof beyond reasonable doubt and the adversary system. The problem with a commitment of this kind is that it can lead to the provision of ready-made answers rather than the identification of appropriate questions.

An illustration should make the point clear. Lawyers' belief in the importance of the careful proof of factual allegations leads them to stress the centrality of the court. In allowing a faith in the court process to provide a point of reference when the operation of the juvenile justice system is being considered, the lawyer can fall into the trap of adopting an ideological answer, and so overlook the need to begin at the beginning, with sceptical questions about how that system actually functions. There is evidence which suggests that children's courts may play a minor part in testing allegations against young defendants. Most young suspects plead guilty; one study, for example, found that some 95 per cent of all youths entering the South Australian juvenile justice system admitted the charges laid against them (Naffine et al. 1990, p. 199). The importance of such a finding is that it shows that instead of accepting the lawyer's answer (the court and the procedures which it employs), we would do better to begin with questions which emerge from an examination of the day-to-day operation of the system. Is it appropriate for procedures which rely heavily on confessions to determine matters of guilt and innocence in the great majority of juvenile cases? If not, what changes should be introduced and what should be the objectives of these changes? To proceed in this manner is to begin with properly formulated questions.

A second illustration concerns the desirability of employing panels and family group conferences. Interest in such methods is at present high. It is all too easy for them to be seen as providing an answer to many of the problems which beset the juvenile justice system. But to enter into abstract debate about the desirability of introducing panels is another example of pre-occupation with ready-made answers. It is with open-minded questions that we must begin. What functions are current procedures failing to perform? In what ways would panels or family group conferences fulfil these functions? For which particular categories of young offenders are they likely to provide an appropriate response?

These two examples indicate the importance of beginning any examination of juvenile justice with questions rather than answers. The first step must always be the identification of deficiencies in existing procedures and the next a consideration of how proposed changes will overcome those deficiencies. The adoption of ready-made answers, particularly those imported from overseas or interstate, is no substitute for the careful diagnosis of problems and the rigorous design of solutions fashioned to solve those problems. The point was made in a different way by one observer of correctional policy, who saw it as guided by a strategy of activity rather than a strategy of search (Empey & Lubeck 1971, p. 7, citing Wright). The result has been characterised as "a kind of intuitive optimism and goal-oriented guessing" (Empey & Lubeck 1971, p. 7). To reject this approach and pursue a strategy of search is demanding and uncomfortable, but it is the only way to make real progress.

Should we do more or less?

The example of the panel illustrates the significance of this next question. If we can move beyond assumptions about the desirability of a panel (and so reject a ready-made answer to an unasked question), we can scrutinise the deficiencies in existing procedures which the introduction of a panel might overcome. A panel can be seen as a simple, speedy and informal alternative to a court or it can be viewed as a means of providing supporting services designed to assist children and their families. The former model has as its objective the diversion of cases inappropriately referred to court. The latter seeks to provide additional assistance to children cautioned by the police or discharged by a court. The essential difference is that the aim of the former model is to do *less* in respect of identified categories of children, while the object of the latter is to do *more*. This distinction emerges only after the significance of the first two questions has been understood. What is required is not only the identification of the objectives to be pursued in respect of particular categories of juveniles, but also an analysis of the extent to which those objectives are not being adequately pursued.

At first sight the panel example may be thought to have limited applicability. It is, however, an illustration which raises a fundamental question about the design of any juvenile justice system. Over recent years, the influence of labelling theory has been profound. Whether the theory should have been so influential is uncertain; one commentator has noted that it "may rank as the most widely accepted unsupported proposition in the criminology of the 1960s and 1970s" (Klein 1976, p. 97). Nevertheless, its impact cannot be doubted. Both in Australia and elsewhere, it became generally accepted that much juvenile offending was a normal part of growing up and that, since maturation would solve the problem, every effort should be made to avoid intervention. Further, even in cases which could not be viewed in this light, minimal intervention was supported on the ground that available methods were likely to do little good and would (by reason of their stigmatising effects) probably cause harm. In short, deep scepticism about the system's ability to help children or to prevent re-offending, combined with fears about deviancy amplification, resulted in a "hands off" policy. The worldly-wise answer to the question "What should be done about delinquency?" was "less".

Two comments can be made about this approach. If it is accepted, it generates important questions. For which categories of offenders should we do less (by diverting them from the official system or by dealing with them by way of simple cautioning programs) and for which should we do more (by way of the provision of sustained social work and institutional services)? And how—and by whom—should the classification be undertaken? Adoption of the more/less dichotomy thus identifies issues which are central to the assessment of existing procedures.

Of greater significance, however, is Braithwaite's challenge to the conclusions drawn from labelling theory (Braithwaite 1989). Implicit in his concept of reintegrative shaming is a radical rejection of current orthodoxy. While he concedes that formal labelling can have harmful effects, he does not

accept that this conclusion should lead to a policy of non- or minimal intervention. He expressly rejects the "debilitating nihilism" which is the product of labelling theory (Braithwaite 1989, p. 20). His argument is that, rather than being tolerant and understanding in its dealings with juvenile offenders, society should be intolerant and understanding (Braithwaite 1989, p. 166). What this means is that we should not start from the assumption that, whenever possible, the seriousness of juvenile offending should be minimised. Instead, we should take steps designed to bring home to offenders an appreciation of the harm and suffering which their offences have caused. We should, however, do this in a way which will not reinforce their deviance. This is not the place to enter into an analysis of Braithwaite's valuable contribution to criminological theory. The aim here is to do no more than underline a crucial implication of this contribution and to emphasise its relevance to the third question posed in this paper. Has the time come to reconsider the conclusions drawn by labelling theorists? If so, in future our search should be for methods of doing more—not less—about certain types of delinquency.

Where should decision-making Powers reside?

This enquiry has a number of facets. Some of these are illuminated by the earlier questions. As has been noted, our society is unsure of the approach to be adopted to young offenders and the juvenile justice system is therefore characterised by ambiguity. One way in which this ambiguity is manifested is in uncertainty as to the location of decision-making power. Should key decisions be made by law enforcement officials or by those with expertise in the social sciences? This problem takes us back to the paper's first question, as to objectives and methods. It also reminds us of the third question's identification of the more/less dilemma. As will be seen, the issues opened up by these two questions are seen in a different light when the focus is on the location of decision-making power.

The point can be illustrated by reference to two decision-making procedures. The first is that employed to determine whether a young offender should enter the formal system. The most important screening procedure in Australia is that employed by the police. This can be characterised as being predominantly a law enforcement model, designed to take into account the seriousness of the offence and the juvenile's previous record (although police may choose to take notice of background factors in some cases). In most parts of Australia it is accepted that the police should exercise complete control over the decision as to whether proceedings are to be taken against a young offender. In South Australia a different model is employed and the decision is made as a result of consultation between a police officer and a member of the Department of Family and Community Services. Here, therefore, the power is shared and twin perspectives are brought to bear. A third model—not employed in this country—would be to confer the power on social workers and to allow them to determine (on the basis of a careful assessment of the child's situation) whether action should be taken.

The model which is considered appropriate—and, therefore, the location of the decision-making power—depends on the clear identification of the objectives to be pursued. Further, it is when the screening process is examined that it is necessary to confront the question of whether the aim is to do more or less. On one view, a system designed to empower the social workers will inevitably embody an interventionist philosophy; granting them decision-making powers can signal an acceptance of the objective of doing more to and for the young offenders who come to notice. In contrast, screening procedures operated by the police may be seen as genuinely diversionary. This, however, may not be correct. If the emphasis is placed on efficiency and the diversion of minor offenders (on the ground that formal processing would be a waste of scarce resources), then a law enforcement approach can be equated with doing less. If, however, the starting-point is the view that early, firm action is needed to curb juvenile crime, then police control of the screening process can lead to more intervention.

The second context in which the decision-making power must be examined is that of children's court dispositional procedures. After guilt has been established, an order must be made as to the measure to be imposed. In some instances, the question as to who should control this process is—at one level of analysis—uncontroversial. When the outcome is a nominal measure (such as a discharge), a fine, or a directive to undertake a specified number of hours of community service, it seems clear that control is in the hands of a legally qualified judge or magistrate. What are involved here are specific measures which fit comfortably within a criminal justice model of the process for dealing with young offenders. Yet on closer examination this picture turns out to be an over-simplified one. The extent to which a children's court exercises "control" is problematic. Where no pre-sentence information is given to the bench, the procedure is relatively simple. Where, however, the court order is based on a pre-sentence report, the question of where the power lies is more complicated. It has been observed that a background report on a young offender can "launder a complex and messy reality" (Harris & Webb 1987, p. 85). The significance of this is that the outcome of a case can be determined (or, at the least, significantly affected) by the way that the report-writer has constructed an image of the offender. Equally, the report-writer may make a recommendation which the court adopts.

What this underlines, of course, is the power of the expert in the social sciences, a power which is an inevitable outcome of the juvenile justice system's hybrid nature. This power is much more obvious in cases which result in sustained intervention, either by way of probation (or supervision) or institutional committal. When this type of intervention occurs, the role of the court is less important than might at first appear. The court's order is, in reality, a broad authorisation; it provides a framework within which those who implement the measure may exercise a significant amount of discretion.

In the case of probation, it is true to say that it is the probation officer, and not the magistrate or judge, who decides what happens to the child. The probation officer determines the nature and intensity of the supervision. The officer also effectively determines its duration, for the probation order merely sets a maximum term and in practice the officer is free to discontinue or

reduce the supervision. Of particular importance is the officer's power to decide whether to initiate breach proceedings should a child not respond to the supervisor's directions. The expectation on which courts operate when they make probation orders is that non-cooperation will result in the child being returned to court to face a more severe sanction. Yet this expectation is often not fulfilled. One English study of the supervision process suggested that "with some offenders missed appointments are so common that they are hardly even commented upon by the supervisors". The authors spoke of supervisors "sabotaging" the process which the courts envisaged (Harris & Webb 1987, pp. 112 and 111). This may represent an extreme view, but it does illustrate the way in which the system operates in such a way as to transfer the decision-making power to the social workers.

The transfer is less marked in the case of institutional measures, but is nevertheless significant. Those who administer the institutions determine the type of program and the level of security to be employed in each case. Working within the limits set by a children's court, they also make, or strongly influence, the decision as to the duration of a child's detention. Further, current procedures commonly allow a great deal of flexibility on such matters as day release. The result is that, to a substantial degree, the nature of the sanction is determined by those who implement it rather than by a court.

It is not intended to rehearse the arguments for and against the pattern of power-sharing which has been outlined. The aim here is to emphasise the need to recognise an important feature of the current juvenile justice system. Those who examine this system with a view to changing it must reach carefully formulated conclusions as to where decision-making powers should lie. Reaching these conclusions requires clear answers to questions as to the assumptions and expertise which should be brought to bear at each stage of the juvenile justice process.

Finally, reference must be made to a quite different consideration which emerges from a scrutiny of decision-making powers. So far the analysis has been in terms of the powers exercised by state officials: police, judges, magistrates and social workers. This reflects the view that a crime is an act against the state and that therefore the power to determine an appropriate response "belongs" to the state. Although this view has gone unchallenged for several centuries, it is now being questioned. It is slowly being recognised that in some cases the fashioning of a response to criminal behaviour can more properly be undertaken by members of the offender's immediate community. In particular, the victim can often be involved in a way which both produces a more satisfactory outcome for her or him and more effectively brings home to the offender the seriousness of the harm caused.

The implications of the possibility that the task of dealing with crime can be seen as "belonging" to the offender's community are beginning to be explored. A valuable model is provided by New Zealand's family group conferences and similar procedures have been developed in Wagga Wagga (Braithwaite 1993, *see* pp. 35-42 of this volume). Such models offer methods of involving the local community in a way not attempted in conventional cautioning and panel procedures. In particular, they could provide an

appropriate means of responding to offences by young Aboriginals. Again, this is not the place to explore this theme. All that is attempted here is to suggest that questions about the proper location of decision-making power have the potential to take us beyond the confines of the existing system and so to provide a new perspective.

Further, the adoption of this perspective raises additional questions, this time about the expertise of those who work in the juvenile justice system. As Harris and Webb have observed, the professionals are in an invidious position. This "vast army" (which includes public servants, judges, magistrates, lawyers, police, social workers and academics) represent a group "whose status and identity depend on their being experts in a subject in which they are persistently unable to make advances" (Harris & Webb 1987, p. 66). If this gloomy conclusion is accepted, it provides another reason for asking questions about where decision-making powers should reside.

The four questions posed in this paper overlap and, in so doing, underline the enormous complexity of the juvenile justice system. Of this system, it has been remarked that "everything is almost inextricably intertwined with everything else" (Harris & Webb 1987, p. 3). There are no simple solutions to the problem of designing procedures for dealing with young offenders. The purpose of this paper has been to identify some of the more important questions.

References

Allen, F.A. 1964, *The Borderland of Criminal Justice—Essays in Law and Criminology*, The University of Chicago Press, Chicago.

Australian Law Reform Commission 1981, *Child Welfare*, AGPS, Canberra.

Braithwaite, J. 1989, *Crime,Shame and Reintegration*, Cambridge University Press, Cambridge.

---------- 1993, "Juvenile offending: new theory and practice", in *National Conference on Juvenile Justice*, eds L. Atkinson & S.A. Gerull, Conference Proceedings No. 22, Australian Institute of Criminology, Canberra. (*see* pp. 35-42 of this volume)

Empey, L.T. & Lubeck S.G. 1971, *The Silverlake Experiment—Testing Delinquency Theory and Community Intervention*, Aldine Publishing Co., Chicago.

Harris, R. & Webb, D. 1987, *Welfare, Power and Juvenile Justice*, Tavistock Publications, London.

Klein, M.W. 1976, "Issues in police diversion of juvenile offenders" in *Back on the Street—The Diversion of Juvenile Offenders*, eds R.M. Carter & M.W. Klein, Prentice-Hall, Englewood Cliffs, New Jersey.

Naffine, N., Wundersitz J. & Gale, F. 1990, "Back to justice for juveniles: the rhetoric and reality of law reform", *Australian & New Zealand Journal of Criminology*, vol. 23, no. 3, p. 192.

New South Wales. Youth Justice Coalition 1990, *Kids in Justice: A Blueprint for the 90s*, Youth Justice Coalition, Sydney.

Seymour, J.A. 1988, *Dealing with Young Offenders*, Law Book Company, Sydney.

Victoria. Child Welfare Practice and Legislation Review 1984, *Report—Equity and Social Justice for Children, Families and Communities*, Government Printer, Melbourne.

JUVENILE OFFENDING: NEW THEORY AND PRACTICE

John Braithwaite

It takes a whole village to raise a child.
African Proverb.

PHILIP PETTIT AND I HAVE DESCRIBED THE KIND OF CRIMINOLOGY WE DO as republicans (Braithwaite & Pettit 1990; Braithwaite 1993). It is not my purpose in this paper to explain how a republican political philosophy can solve a range of problems that are unsolved by liberal political theory. Suffice it to say here that a key concept in the civic republican tradition is citizenship. This is critical in the fraternité part of the republican slogan of "*liberté, égalité et fraternité*". *Fraternité*, of course, is not much of a concern with liberal political theory, sharply focused as it is on the struggle of individuals to be free from the restraints of state power.

Australia and New Zealand have criminal justice systems that are shockingly oppressive in either liberal or republican terms, systems that have been characterised by brutality, racism, patriarchy, contempt for both offenders and victims by professionals within the system, fabrication of evidence, corruption and ineffectiveness. However, there have been some modest changes in recent years which must be judged progressive from a republican perspective. Whatever the imperfections of the Fitzgerald reforms to the Queensland criminal justice system (Queensland 1989), and they are considerable, they do manifest a shift in the direction of accountability to citizens and even engagement of citizens through their capacity to make submissions to the Criminal Justice Commission and the parliamentary Criminal Justice Committee.

Generally, throughout Australia and New Zealand, we have seen some increase in the importance of citizenship in policing under the slogan of community policing. Most important in terms of its effects, social movement politics have become more important (Braithwaite 1991). Pre-eminent among these has been the women's movement, which has sought to change patterns of domestic violence by communicating directly with citizens, asking women to break the silence and men to speak out against misogyny among their mates. Similarly, there has been the social movement against environmental

despoilation and white-collar crime generally. Finally, the social movement against drink driving, which is probably saving many more Australian lives each year than the total number of murders, has been transacted in part through direct appeals to citizens, such as through television, to change the practices of drinking groups, and by having designated drivers.

The ideological shift struck me on a recent visit to Wagga Wagga when I attended a crime prevention workshop run by the police for a group of eleven-year-old children. The constable asked the group of children what they would do if dad offered them a drive when he had had too much to drink. "Now I don't want you to tell me if dad ever has done that. I just want you to think about whether you would be responsible enough for your own safety to get in a car with anyone, even dad, who had had too much to drink." It occurred to me that this is not a liberal crime control strategy; indeed it is one that might be distasteful to many liberals because it intervenes in the private space of the family. It is a republican strategy because it is about the direct engagement of young citizens catalysed by the state. Potentially, it might also be an effective strategy because our own children could be in a uniquely powerful position to shame us if we drink and drive. The point is that it is no longer true to characterise debates over criminal justice policy in Australia and New Zealand as battles between liberalism and authoritarianism; we can also conceive of a liberal/republican divide that is becoming increasingly important.

No reform manifests the shift more clearly than the New Zealand Children, Young Persons and their Families Act 1989. This act is about citizenship responsibilities as fundamental to the strategy for dealing with juvenile crime, as well as citizenship rights. This republican statute's political motivation comes not from the Roman or Florentine or French or American republics, but from the great Maori republics. It was a reform from below, not a reform from the North. Reform had its roots in the frustration of Maori families with the way the Western state disempowered them through the criminal justice system. In the report prepared by Maori leaders that was the first step to the radical transformation of the New Zealand juvenile justice system, the Maori critique of Western criminal justice was forceful: "Imprisonment typified the Western response—the equation of individuals with animals distanced from their communities but later to be inflicted back on them" (Ministerial Advisory Committee 1986).

The spirit of the New Zealand juvenile justice reforms is to get offenders and their communities, particularly their families, to take responsibility for offending. Crime victims have their rights as citizens taken more seriously. But they too are asked to shoulder the citizenship responsibility of participating in a constructive way in a deliberative process oriented to helping the offender to become a law-abiding, rights-respecting citizen. Under this model, both the offender and the victim are imputed the status of responsible citizen in a community, whereas under a liberal model their status is as individual subjects of state justice; the status of the victim is simply that of evidentiary cannon fodder, of witness or claimant, not of citizen with participation rights and obligations.

So how is this supposed to work in practice? The part of the New Zealand reforms which are most exciting in this respect is the family group conference. Instead of dealing with an offender before a juvenile court, a youth justice coordinator convenes a conference to which the offender, the offender's family (extending often to aunts, grandparents, cousins), other citizens who are key supports in the offender's life (perhaps this might be a football coach he particularly respects), the victim, victim supporters (often family members), the police and in some contexts a youth justice advocate are invited.

Braithwaite and Mugford (1992) have conceived of these conferences as citizenship ceremonies of reintegrative shaming[1]. The theory of the reform, not always translated into practice, is that the discussion of the harm and distress caused to both the victim and to the offender's family will communicate shame to the offender for what he or she had done. Secondly, the intention of assembling around the offender the people who care about and respect them most is to foster reintegration, or healing as they prefer to call it. Healing of social relationships. In the traditional Maori way, the healing can have a rather physical manifestation at the end of the conference through hugging, kissing on the cheek and nose pressing. Whatever the cultural form in which it is manifested, the objective is to avoid casting out, stigmatising the young person. A successful conference is one where the offenders are brought to experience remorse for the effects of their crimes and to understand that they can count on the continuing support, love and respect of their families and friends.

In *Crime, Shame and Reintegration*, I argued that ceremonies which accomplish this are important to crime control (Braithwaite 1989, p. 173). The trouble with the conventional liberal process is that it is stigmatising. Traditional courtrooms fail as a communicative and problem-solving forum. The denunciations of prosecutors, judges and police who enjoy no intimate bond of care and mutual respect with the offender are liable to degrade and stigmatise. Consequently, the young person is liable to reject his rejectors, and in the worst scenario, find comfort and symbolic distance from his rejectors in

---

[1]. The key theoretical idea here is that shaming can be partitioned into reintegrative shaming (which controls crime) and stigmatisation (which can make the crime problems of shamed actors worse). The distinguishing characteristics of the two types of shaming are as follows:

Reintegrative shaming

1. Disapproval while sustaining a relationship of respect.
2. Ceremonies to certify deviance terminated by ceremonies to decertify deviance.
3. Disapproves evil of deed without labelling person as evil.
4. Deviance not allowed to become a master status trait.

Stigmatisation

1. Disrespectful shaming, humiliation.
2. Ceremonies to certify deviance NOT terminated by ceremonies to decertify deviance.
3. Evil person, not just evil deed.
4. Deviance allowed to become a master status trait.

the world of a delinquent subculture. According to the theory, when the institutions of the courtroom and the detention centre take a liberal form, they not only fail to prevent crime, they cause it through the symbolic effects of stigmatisation.

Family group conferences also fail quite often as reintegrative ceremonies. Braithwaite & Mugford (1992) have recently attempted to set down fourteen conditions that distinguish successful from unsuccessful reintegration ceremonies. Highly stigmatising family group conferences still exist, and ridding criminal justice ceremonies of stigma, and replacing stigma with reintegrative shaming, is an enormous task. Surprisingly, the parents of the young offenders brought before the conferences I have observed seemed more stigmatic than the victims or the police. Perhaps this is a social selection effect. The parents who have histories with their children that lead them to a formal confrontation with the juvenile justice system may act in a more stigmatic way toward their children than the average parent. The sort of crime victim and police officer who agree to participate in these conferences may be more nurturing than the average victim and the average police officer. However, I suspect this may be more a social context effect than a social selection effect. When crime victims are asked to be good citizens by giving up their time for a conference in the hope that this will get the young offender's life back on track, so that other victims will not suffer the same fate, they do tend to treat their participation in the conference as a civic act. Certainly, they are often interested in getting compensation for losses they have suffered. But as Clifford Shearing remarked with surprise after observing two conferences in Wagga Wagga: "They all wanted to win the battle for his [the offender's] soul rather than his money". Shearing was alluding here to Nikolas Rose's (1990) influential book, *Governing the Soul*.

The now considerable literature on public attitudes to crime shows that while citizens are extremely punitive and unforgiving in the abstracted attitudes they express in public opinion surveys, as citizens get closer and closer to making judgments about particular offenders based on a detailed understanding of the background to the offence, they get less and less punitive (Doob & Roberts 1983; Heinz & Kerstetter 1979; Kigin & Novack 1980; Shapland, Willmore & Duff 1985; Wietekamp 1989, pp. 83-4). While the victim movement may be a rather punitive one, individual victims empowered in dealings where they are given some detailed insight into the life circumstances of their offender can be surprisingly non-punitive (Ashworth 1986, p. 118).

Actually, the Wagga Wagga program of family group conferences is probably more a success in its dealings with victims than the New Zealand program. The satisfaction level of police, Youth Justice Coordinators, parents and young offenders were very high in a recent evaluation of New Zealand conferences—91 per cent, 86 per cent, 85 per cent and 84 per cent respectively (Morris & Maxwell 1993). But victim satisfaction with the outcome of the conference was only 48 per cent. Of course, one might interpret this as a good result compared with victim satisfaction with traditional courts. But we must combine this negative result with the fact that only half the family group

conferences in New Zealand succeed in getting victims or victim representatives along to the conference.

The Wagga Wagga program is yet to receive the kind of systematic evaluation undertaken by the Victoria University team in New Zealand, but it seems clear that the Wagga Wagga program is being considerably more successful at getting the attendance of victims and victim supporters. The unsystematic evaluation work in Wagga Wagga also suggests a high level of victim satisfaction possibly because the Wagga Wagga program puts in a lot of work, in the words of Senior Sergeant Terry O'Connell, to "make the victim feel important". One might say that the philosophy of the Wagga Wagga program is more victim-centred, while the philosophy of the New Zealand program is more centred on the young person. With regard to reintegrative shaming, being victim-centred has advantages from an offender point of view. The objective of focusing on the act and the problems it has caused for the victim can steer the ceremony away from a stigmatising preoccupation with the badness of the young person. In other words, being victim-centred can foster shaming that is focused on specific deeds rather than whole persons. While the Wagga Wagga reforms have learned so much from New Zealand, this is where there is something that the New Zealanders can learn from Wagga Wagga.

There is a political dimension to the victim-orientation as well. Conservative law and order politicians constantly hammer two themes: the decay of the family as an institution in contemporary societies and the crime victim as the forgotten player in offender-centred criminal justice systems. The political feasibility of the family group conference is that it empowers families and sharpens family responsibilities (as well as offender responsibilities) to come up with solutions to the problem at the same time as it empowers victims. The process is an opportunity for politicians to match their rhetoric with political support for a family-centred, victim-centred program. Conservative politicians can also find that their traditional allies in law and order campaigns, the police, are enthusiasts for family group conferences—witness the 91 per cent police satisfaction with conference outcomes in New Zealand. Witness also the fact that in Australia, it is the police who are the leading force for progressive reform in this area and that the Australian and New Zealand Police Federation carried a resolution at its 1991 conference in support of the New Zealand program. This is a program that, through being republican in its philosophical foundation, not only muddies the liberal/authoritarian divide, it also muddies the divide between the constituencies who support law and order and those who oppose net widening. The net that is widened is not the net of state control, it is the net of community control. Both the New Zealand and Wagga Wagga programs have, on balance, done much more to narrow than to widen nets of state control (*see* Morris & Maxwell 1993).

The key ingredients of this approach to juvenile justice reform are therefore really quite simple:

- Convene a conference to which the key invitees are the offender, the people who are most supportive of the offender (usually his or her family), the victim and people to support the victim.

- Give all participants an opportunity to explain how the offence affected their lives and to put forward proposals for a plan of action.

- After the offender and his or her family have listened to the other speakers, empower them to propose final plans until they come up with a plan that is agreeable to all participants in the conference (including the police).

- Monitor implementation of the plan, particularly those elements involving compensation to victims and community work.

My empirical claim is that such a criminal justice procedure encourages reintegrative and discourages stigmatic forms of shaming; it tends to nurture acceptance of responsibility by individuals and families, apology, restitution and forgiveness; it discourages exclusionary forms of punishment and outcasting. This, of course, is a claim that can be rebutted by well-designed evaluation research.

These simple principles and procedures could be viewed as rather similar in their community policing philosophy to community aid panels or as similar to dyadic victim-offender reconciliation programs that have enjoyed some popularity in the United States for decades. However, they involve a major conceptual leap beyond these ideas. A community aid panel of Aboriginal elders is a significant step toward community policing for dealing with Aboriginal offenders. However, in an urban setting, the Aboriginal elders will not necessarily be people the young Aboriginal will know or respect. The idea of family group conferences is to assemble in the room the particular Aboriginal people who care about a particular Aboriginal young person. It mobilises a communitarian process on both the victim and the offender side, not simply a dyadic victim-offender reconciliation between two individuals. But it is a form of communitarianism that can and does work in large multicultural cities. It is a practical form of communitarianism because it is individual-centred. Instead of citizens being asked to participate on behalf of an abstract goal like community crime prevention (as with Neighbourhood Watch), they are asked to come along to help a particular young person or a particular victim. My observation is that citizens are flattered to be nominated as someone who enjoys the respect of a young person in trouble or a victim experiencing trauma. So they participate when the approach is made in these terms.

The New Zealand Maoris have shown us the path to a form of communitarian control that, within broad principles, can be flexible enough to accommodate not only a Maori minority and a white majority, but a great plurality of cultures and subcultures. Pacific Islander communities in New Zealand, just like the Aboriginal community in Wagga Wagga, have adapted the model to accommodate their cultural forms. New Zealand is showing the

world how communitarian crime control can work in individualistic capitalist metropolises through the practical expedient of constructing an individual-centred communitarianism. But like all beautiful theories, it can be and is corrupted by ugly practices. Women are often dominated by patriarchal family structures in these conferences. Sometimes when families are effectively empowered by the conference process, they use that power to further crush a young person whose voice is barely heard during the conference (*see* Morris & Maxwell 1993). Sometimes racism flares between victims and offenders of different backgrounds.

Even when the process works well, a two-hour conference rarely turns around problems that have been festering for many years. Yet the theory of the conference is not that the conference itself will transform lives, but that the conference could be a catalyst for communities to commit to taking responsibility for ongoing action plans. Even more modestly, the conferences can be construed as a means for the community to ritually signify the fact that it takes crime seriously, without doing the harm that characterises the alternative rituals of courtroom trials, formal punishment and incarceration.

References

Ashworth, A. 1986, "Punishment and compensation: victims, offenders and the state", *Oxford Journal of Legal Studies*, vol. 6, pp. 86-122.

Braithwaite, J. & Mugford, S. 1992 (unpub), Conditions of successful reintegration ceremonies, unpublished paper, Australian National University.

Braithwaite, J. & Pettit, P. 1990, *Not Just Deserts: A Republican Theory of Criminal Justice*, Oxford University Press, Oxford.

Braithwaite, J. 1989, *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge.

---------- 1993, "Inequality and republican criminology", in *Crime and Inequality*, eds J. Hagan & R.D. Peterson, Stanford University Press, Palo Alto.

Doob, A. & Roberts, J.V. 1983, *Sentencing: An Analysis of the Public's View of Sentencing*, Report to the Department of Justice, Ottawa, Canada.

Heinz, A. & Kerstetter, W. 1981, "Pretrial settlement conference: evaluation of a reform in plea bargaining", in *Perspectives on Crime Victims*, eds B. Galaway & J. Hudson, Mosby, St. Louis, Mo.

Kigin, R. & Novack, S. 1980, "A rural restitution program for juvenile offenders and victims", in *Victims, Offenders and Alternative Sanctions*, eds J. Hudson & B. Galaway, Lexington Books, Lexington, Ma.

Ministerial Advisory Committee 1986, Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, Puao-Te-Ata-Tu (day break), Department of Social Welfare, Wellington, New Zealand.

Morris, A. & Maxwell, G.M. 1993, "Juvenile justice in New Zealand: a new paradigm", *Australian and New Zealand Journal of Criminology*, vol. 26, pp. 72-90.

Queensland Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct 1989, *Report of a Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, [The Fitzgerald Report], Queensland Government Printer, Brisbane.

Rose, N. 1990, *Governing the Soul: Shaping the Private Self*, Routledge and Kegan Paul, London.

Shapland, J., Willmore, J. & Duff, P. 1985, *Victims in the Criminal Justice System*, Cambridge Studies in Criminology, Gower, Aldershot.

Weitekamp, E. 1989, Restitution: A New Paradigm of Criminal Justice or a New Way to Widen the System of Social Control?, Unpublished PhD Dissertation, University of Pennsylvania.

THE COURTS, THE JUDICIARY AND NEW DIRECTIONS: THE LIMITS OF LEGISLATIVE CHANGE

Kate Warner

THE LAST FIFTEEN YEARS HAS BEEN A PERIOD OF REASSESSMENT AND change in juvenile justice legislation in Australia. From the 1970s two distinct strands of criticism were evident.

On the one hand, there were critics who were concerned that the system was too permissive and on the other, there were those who asserted the system reflected class bias and the motives of the original reformers were as much concerned with the control of young people whose behaviour threatened middle class values as with helping young offenders (Freiberg et al. 1988, p. 4; Morris & McIsaac 1978; Alder & Polk 1985). But the common theme of the critics was the attack on rehabilitation because of evidence of its failure, its excesses and its dangers. They pointed to the failure to protect due process rights, to levels of coercive intervention disproportionate to the offence and to a failure to distinguish between offenders and neglected children unfairly stigmatising the latter and confusing the former.

In response to such criticisms and to concern with a perceived problem of growing juvenile crime rates, there has been considerable legislative change governing young offenders. Four states have rewritten their legislation dealing with young offenders and child welfare, the two territories have new legislation, in Queensland a Juvenile Justice Bill is before Parliament and Tasmania is in the process of review. A shift in philosophy is evident. Unlike North America, this shift has not been a swing from one extreme to another, but the influence of a different model is apparent. Attempts to theorise models of juvenile justice are contentious (Youth Justice Coalition 1990, pp. 41-4). So is the attempt to fit a particular system within a particular model (Freiberg, Fox & Hogan 1988, pp. 162; 1989, p. 280). But if the conventional models of welfare and justice are accepted and it is acknowledged that they are not opposites or unidimensional concepts, the current cycle of reform to juvenile justice involves a shift from a welfare model to a justice model. This is evidenced by a new emphasis on due process procedures, personal

responsibility of offenders, splitting of welfare and criminal jurisdictions and proportionality and determinancy of sentences. But this is not the whole picture. The emphasis on reducing the number of offenders going to court by diversionary mechanisms shows the shift has not been consistent. As Seymour (1988, p. 171) points out, the desire to give young offenders special treatment has remained and focusing on the offence has not been conceived as requiring the system to turn its back on leniency, benevolence and flexibility—at least for most young offenders.

The changes in the legal framework of the juvenile justice system in relation to investigation and prosecutorial discretion reflect a mixed approach, both a shift towards justice and a welfare approach. The increased emphasis on procedural rights is a continuing trend and a positive side of the move towards a justice model. The emphasis on the goal of diversion of young offenders and attempts to adopt the least intrusive solution to juvenile offending do not reflect the ideology of the justice model, but the emphasis on due process, rights and structured decision making in relation to prosecution and caution reflects the procedural strand of the justice model. On the other hand, the emerging emphasis on individual responsibility and more punitive dispositions is a reflection of the substantive aspects or ideological content of the model (Freiberg et al. 1988, pp. 165-70).

This process of review and legislative change has been both slow and contentious. A valuable contribution to the debate was made by a study by Freiberg et al. (1988) for the Australian Law Reform Commission's sentencing reference. This not only looked at sentencing young offenders, it also described the main features of juvenile crime in Australia and analysed the statutory framework for juvenile justice in terms of the values, interests and objectives underlying the system. The gains and losses of a shift to a justice approach were discussed. In 1990 a review of the juvenile justice system of NSW was completed and published with the title, *Kids in Justice*. In Western Australia the Legislative Review committee completed and published its *Laws for the People*, a review of welfare and community services legislation dealing with young offenders. South Australia has been the latest to commence a new review with the appointment of a parliamentary select committee to review the *Children's Protection and Young Offenders Act 1979*, the administration of the Children's Court, and the adequacy and effectiveness of resources and programs. Probably nowhere has the process of legislative change been more tortuous than in Tasmania. The *Child Welfare Act 1960* has been under review since at least 1980 when the Roe Committee made recommendations for change. Although new legislation has been on the agenda since then, a Bill has yet to be introduced into Parliament.

What have been the major developments?

Police Investigation

While in recent years there have been changes to court systems and sentencing options for young offenders, modification to police procedures has been less extensive. This reflects the relative neglect of the legal regulation of police powers and the rights of a suspect in the face of police investigation in

the criminal justice system as a whole. An important change has been the attempt to protect the right to silence by giving statutory recognition to certain rights rather than merely leaving them to be dealt with by internal police instructions. Five jurisdictions (NSW, the ACT, SA, Victoria and the NT) have statutory provisions requiring the presence of a parent or independent adult when a juvenile suspect is being interviewed. In NSW and the territories a legal practitioner may take the place of the parent or guardian. In South Australia and Victoria there are statutory provisions allowing adult and juvenile suspects access to a friend or solicitor during interrogation. Although an advance on police instructions, the statutory provisions do not go far enough. For example, the Victorian requirement for parental presence does not apply to a preliminary interview and any statement in contravention may be admitted although illegally obtained. In NSW, failure to comply with presence requirements renders statements inadmissible, but is only a retrospective control on police questioning. What is needed are statutory requirements for presence and a provision for inadmissibility which applies to preliminary interviews and repeated admissions which are initially made in the absence of a parent or responsible adult. Access to legal advice should also be required during questioning. To give substance to this right there should be a requirement to inform suspects of it and provision of publicly funded duty solicitors to ensure the availability of legal advice.

To minimise stigma and reduce penetration into the criminal justice system there is a trend in favour of legislation and police instructions that seek to encourage reliance on procedures other than arrest. New South Wales and Western Australia have introduced attendance notices, simple oral or written directions requiring a young offender to appear in court on a specified date. The proposed Queensland Juvenile Justice Bill requires police to proceed by way of attendance notice rather than arrest, except in specified circumstances (Department of Family Services and Aboriginal and Islander Affairs 1992, p. 6). Other jurisdictions have statutory provisions exhorting police not to arrest unless summons procedures would not be effective and some list factors justifying arrest. But evidence showing that the Northern Territory has the highest juvenile arrest rate and of disparity within NSW in the use of attendance notices suggests that entrenched police practice as much as legislative policy directives determines juvenile arrest rates.

In NSW, Victoria, Tasmania and the Territories there are statutory restrictions on fingerprinting of juvenile offenders. A court order is required in Victoria (*Crimes Act 1958* s464) and in Tasmania there is no power to fingerprint prior to conviction (*Criminal Process (Identification and Search) Act 1976* (Tas) s3(1)). Nevertheless there is evidence that fingerprinting of children at the police station prior to conviction is common in Victoria and Tasmania despite the absence of power (Alder 1992), suggesting that legislative constraints do not necessarily have an impact on routine police practices.

Police Cautions

Recent reviews of systems of diversion for young offenders have come out in favour of legislative recognition and regulation of police cautioning rather than panels (Legislative Review Committee 1991, p. 68; Department of Community Services, Tasmania 1991, p. 22). In Western Australia both informal, on the spot cautions and written formal cautions are sanctioned by legislation which was proclaimed in August 1991. Formal cautions are not limited to first offenders and policy statements indicate that between two and three cautions can be given before a different course of action is taken. In the Territories cautioning is the subject of limited legislative controls. In other jurisdictions they are regulated by standing orders or police instructions. In NSW and Tasmania cautioning rates are low (Youth Justice Coalition 1990; Warner 1992). The Youth Justice Coalition has recommended the promotion of cautioning by statutory recognition, policy endorsement, training and state wide monitoring (Youth Justice Coalition 1991, p. 244). In Tasmania a new cautioning scheme is being developed which is anticipated could lead to a reduction of 50 per cent in the numbers of people appearing before the Children's Court (Stokes 1992, p. 13). A key feature of the Queensland Juvenile Justice Bill will be to provide a legislative base for the police system of cautioning (Juvenile Justice in Queensland 1992, p. 6).

Children's Courts

There have been a number of important changes to Children's Courts in recent years. In South Australia and Western Australia they have been given an enhanced status by the appointment of judges, in keeping with a court that has a jurisdiction that is wider than other courts of summary jurisdiction. Queensland's proposed Children's Court Bill will provide for the appointment of a Children's Court Judge. Separation of criminal and welfare proceedings occurred first in South Australia and has now been achieved in most jurisdictions in response to a just deserts approach to young offenders. In Victoria, for example, there are separate divisions of the court for care matters (the Family Division) and for criminal matters (the Criminal Division).

Desirable developments in Children's Court procedures include an emphasis on comprehension, participation and legal representation. A number of studies have found that many young offenders do not understand the proceedings in Children's Courts (New South Wales State Council of Youth 1984, p. 8; New South Wales Women's Coordination Unit 1986, p. 123; Warner 1987, p. 177; Australian Law Reform Commission 1981, p. 58; McDonald & Kunnen 1988; O'Connor 1990, p. 14.) Now all states except Tasmania and Queensland have legislation promoting comprehensibility of proceedings. Typically the legislation requires specific explanation of the ingredients of the offence charged, the allegations and their implications, and an explanation of the nature of court orders. Legislative attention has also been directed at the need to encourage participation. Just as adult defendants have been found to be frustrated by their difficulty in participating adequately in court proceedings, so have children (Freiberg et al. 1988, p. 287;

O'Connor 1990, p. 14). The *Children's (Criminal Proceedings) Act 1987* (NSW) s6(a) makes the right to be heard and the right to participate one of the governing principles and in Victoria, the *Children and Young Person's Act 1989* (Vic.) s18 lists allowing full participation as one of the procedural guidelines. Legislation soon to be considered by the Queensland Parliament will have as a guiding principle that the child should be given the opportunity to participate in and understand the proceeding (Department of Family Services and Aboriginal and Torres Strait Islander Affairs 1992, p. 6).

There has been a significant change in the attitude to legal representation in Children's Courts in the last twenty years. Until the mid 1970s lawyers were thought to hinder the work of the court and to create conflict with welfare workers. Consistent with a move towards a just deserts philosophy, there is now widespread support for legal representation in Children's Courts on the basis it will mean greater procedural and substantive justice and will advance the autonomy and accountability of young people (Freiberg et al. 1988, pp. 82). This is not say there are no problems with legal representation and a number of problems have been identified. These include co-option into the dominant ideology of the bench (Morris 1983, p. 138); criticisms of the quality and effectiveness of legal representation, especially that provided by duty counsel systems (Freiberg et al. 1988, pp. 339; O'Connor 1990, p. 15; Legislative Review Committee 1991, p. 76) and confusion about the appropriate role of lawyers in Children's Courts (Child Welfare Practice and Legislation Review Committee 1984, p. 433). Statutory recognition of the importance of legal representation is evident in provisions in South Australia and the Northern Territory which allow a children's court to make provision for legal representation (*Children's Protection and Young Offender's Act 1979* (SA), s91(4); *Juvenile Justice Act 1983* (NT) s40). The planned juvenile justice legislation for Queensland imposes a duty on the court to ensure that a young person has been given a reasonable opportunity to obtain legal representation. In Victoria the *Children and Young Person's Act 1989* makes a unique attempt to give lawyers guidance on where their primary responsibility lies, by providing in s20(9):

> Counsel or a solicitor representing a child in any proceedings in the Court must act in accordance with any instructions given or wishes expressed by the child so far as is practicable to do so having regard to the maturity of the child.

Developments in relation to sentencing reflect the two strands of criticism of the welfare approach to young offenders and the tensions between them. The trend is for guiding principles in relation to sentence to stress individual responsibility and community protection as well as the needs of the offender (for example *Children and Young Persons Act 1989* (Vic.) s139(1) which is almost identical to principles contained in the South Australian and ACT legislation). In addition, recognition of the principle of proportionality and disillusionment with rehabilitation has meant indeterminate sentencing options had all but disappeared only to be resurrected in Western Australia

in the *Crime (Serious and Repeat Offenders) Sentencing Act 1992*. The trend away from custodial sentencing options is encouraged in four ways:

- by community based options (for example youth supervision orders and youth attendance centre orders in Victoria;
- by statutory recognition of the principles of frugality of punishment (for example *Children's* (*Criminal Proceedings Act 1987* (NSW) s33(2)),
- by providing that a custodial order should be a measure of last resort; and
- by a requirement that reasons be given if a custodial order is made (for example *Children's Court of Western Australia Act* (No 2) 1988 (WA) s26(b); *Children and Young Persons Act 1989* (Vic.) ss186(2), 188(2)).

But the view that the system has been too permissive and young offenders are often dealt with too leniently has not just been recognised by requiring courts to have regard to the need to protect the community and to ensure that a child accepts responsibility for their actions. There is evidence of a severe and punitive response to those young offenders who are perceived as being serious repeat offenders, and a trend to classify young offenders as hard-core criminal and others. The best example of this is the Western Australian *Crime (Serious and Repeat Offenders) Sentencing Act 1992*, which allows for young people who are classified as serious repeat offenders to receive a minimum of eighteen months detention if they are convicted of a prescribed violent offence. Release is to be determined by a Supreme Court judge. Juvenile crime is indeed a serious problem, but the solution to it does not lie in a getting tough approach which will not prevent or reduce crime, but will undoubtedly increase the Aboriginal detention rate. This Act stands very uneasily beside departmental policy which sees the key role in reducing offending in "preventative community based strategies, not in the formal justice system alone" (Juvenile Justice in Western Australia 1992, p. 17). These preventative strategies target high offending sections of the community for a community development approach, geared towards empowering the local population to address the underlying problems.

Conclusion

The revival of just deserts philosophy has had an impact on the juvenile justice system. The outcome of recent reviews of juvenile justice has resulted in a shift from rehabilitation and welfare to an emphasis on the offence and deserved punishment. At the same time recognition of the need for a separate system for young offenders has been reinforced by special measures to divert and decarcerate. What has emerged is a system which has pluses and minuses. In many Australian jurisdictions there are now systems which distinguish between young offenders and children in need of care, avoiding stigmatising the latter and frankly acknowledging, in the case of the former,

that intervention is about punishment and is not purely benevolent. There is a growing trend to seek to make ideology explicit by setting out principles to guide the exercise of powers in the system. To do so would seem to be a plus if a coherent framework for the development of policies, programs and practice is provided. But whether these statements achieve more than placating different interest groups by giving expression to a range of philosophies with unresolved tensions has been questioned (Fox 1985, p. 165). Attention to due process at the investigatory stage by the recognition and protection of the right to silence by requirements of the presence of an independent person during questioning is a definite plus.

Diversion strategies that give legislative recognition and encouragement to police cautioning and discourage the use of arrest by legislative exhortation and the provision of alternative procedures are positive developments. Legislative provisions that encourage participation of young defendants at the adjudicatory stage and seek to improve the comprehensibility of procedures are welcome. They are not an integral part of the justice model but are implicit with its concern for accurate fact finding (Freiberg et al. 1988, p. 533). There are also positive elements at the sentencing stage. The principle of proportionality is a useful limiting principle, preventing excessive efforts at rehabilitation as well as excessive punishment. Determinancy of sentences is resulting in the replacement of indeterminate committal orders and wardship with sanctions that have a known release date. And the principle of frugality of punishment seeks to ensure that the type and length of the sanction will be the least restrictive appropriate to the gravity of the offence.

In most jurisdictions there have been many improvements to the legal framework of juvenile justice. But nowhere is it adequate. Important matters are only partially or are totally unregulated and the various systems only go a short way to structured decision making. There are glaring omissions at the investigatory phase. Some important matters are regulated by internal police instructions, but given their ambiguous status (they do not create rights, but rather specify desirable practices), and their inaccessibility, legislation is to be preferred. The absence of a charter of rights for young people has been criticised. This would be particularly valuable at the investigatory stage, for currently what "rights" that can be implied are found scattered through a variety of statutes, regulations and internal police instructions. Existing requirements for the presence of an independent adult are inadequate in most jurisdictions. Prospective statutory requirements for presence drafted to cover preliminary questioning are necessary with provisions for inadmissibility in the event of non-compliance. A statutory right to the presence of a lawyer is necessary and an obligation to inform a young person of that right. Criteria for arrest and simple alternatives such as attendance notices should be introduced in all jurisdictions. The ideal of a clear requirement of parental notification of questioning, arrest, charge and caution is not met in all states. Some states lack any effective restrictions on fingerprinting of young suspects. Existing statutory provisions are not adequate to ensure that young people are not detained in police facilities, nor do they sufficiently provide for conditions that distinguish young and adult offenders. Few states have an

adequate legal framework for encouraging the use of informal and formal cautioning with clear criteria for decision making.

The limits of the formal juvenile justice system as a response to crime should be recognised. It should not be seen as the only solution to juvenile crime for it cannot hope to deal with the underlying causes. The danger of seeking the answers to juvenile crime in the formal justice system is that it inevitably leads to the superficial response of a "law and order" solution on the assumption it will be effective or at least give the appearance of doing something. A broader response which does not ignore the social and economic dimensions of juvenile crime is necessary. "Getting tough is not an adequate strategy" (Youth Justice Coalition 1990, p. 8, p. 36). It should not be forgotten that for many offences only a minority are known to the police and even less are "cleared". The formal system is only processing the tip of the iceberg. Nor should it be forgotten that far from achieving a corrective effect, getting caught up in the criminal justice system seems a primary determinant of a continued criminal career. The system neither rehabilitates nor deters. Harsh sentences will not prevent or reduce crime, but will increase detention rates.

There is another reason why the legal framework must not be viewed in isolation. There is little point in giving legal recognition to the rights of children if they cannot be asserted or are systematically ignored. There is little point in legislative exhortations to proceed by way of arrest or to reserve custody as a measure of last resort if they are systematically ignored. And the introduction of a new diversionary method as an alternative to prosecution, or an intermediate level of sanction as an alternative to imprisonment can have a "net-widening effect". The limits of a rights based approach are revealed by evidence that even when young people know of their rights, they are frequently unable to assert them and often suffer harm as a consequence of trying to do so (Brown 1984; O'Connor & Sweetapple 1988; O'Connor 1989; Alder et al. 1992). There is evidence that requirements for parental presence during questioning and restrictions on fingerprinting of children are routinely ignored (Cunneen 1990; Alder 1992). In the case of legislative measures to encourage police to use alternatives to arrest there is some evidence that entrenched police behaviour may be more important than legislative framework or policy directives. As to net widening, it has been shown that panels may increase the penetration of many young offenders into the juvenile justice system (Freiberg et al. 1988, p. 132).

Alternatives to imprisonment may be merely additions to the hierarchy of sanctions, heightening the impact of less serious offences and blurring the impact between custody and non-custodial options, at worst leading to more young people in custody rather than less (Muncie & Coventry 1989). Changes to the legislative framework are not enough. The operation of the system must be continuously monitored to assess whether the aims of the legislation are being achieved. Currently the lack of coordinated and statistical research effort into what happens when a young person is caught up in the juvenile justice system considerably impedes the development of juvenile justice policy (Freiberg et al. 1988, p. 24).

References

Alder, C. 1992, "The young people", in *Perceptions of the Treatment of Juveniles in the Legal System, Report to the National Youth Affairs Research Scheme,* eds C. Alder, I. O'Connor, K. Warner, & R. White, National Clearinghouse for Youth Studies, University of Tasmania, Hobart.

Alder, C. & Polk, K. 1985, "Diversion programs" in *Juvenile Delinquency in Australia*, eds A. Borowski & J.M. Murray, Methuen, Sydney.

Alder, C., O'Connor, I., Warner, K. & White, R. 1992, *Perceptions of the Treatment of Juveniles in the Legal System, Report to the National Youth Affairs Research Scheme*, National Clearinghouse for Youth Studies, University of Tasmania, Hobart.

Australian Law Reform Commission 1981, *Child Welfare*, Report No. 18, Australian Law Reform Commission, Sydney.

Brown, D. 1984, "The Centrality of Police Interrogation and the Adequacy of a Discourse of 'Rights' ", *Legal Services Bulletin*, vol. 9, pp. 186-8.

Child Welfare Practice and Legislation Review Committee 1984, *Report*, Government Printer, Melbourne.

Cunneen, C. 1990, *A study of Aboriginal Juveniles and Police Violence*, Human Rights and Equal Opportunity Commission, Sydney.

Department of Community Services, Tasmania 1991, *Corrective Services Legislation for Young Offenders*, Issues Paper No. 2, Department of Community Services, Tasmania, Hobart.

Department of Family Services and Aboriginal and Islander Affairs, Queensland 1992, "Juvenile Justice in Queensland", *Criminology Australia*, vol. 4, no. 1, pp. 5-7.

Freiberg, A., Fox, R. & Hogan, M. 1988, Sentencing young offenders, Sentencing Research Paper No. 11, Australian Law Reform Commission and Commonwealth Youth Bureau, Sydney.

"Juvenile Justice in Western Australia", 1992, *Criminology Australia*, vol. 4, no. 1, pp. 14-17.

McDonald, P. & Kunnen, N. 1988, *Juvenile Justice . . . the Missing Ingredient: A Report on the Independent Legal Services to Youth detained at Longmore Remand Centre*, Department for Community Services, Western Australia.

Morris, A. & McIsaac, M. 1978, *Juvenile Justice?*, Heinmann, London.

Morris, A. 1983, "Legal Representation and Justice" in *Providing Criminal Justice for Children*, eds A. Morris & H. Giller, Edward Arnold, London, Baltimore.

Muncie, J. & Coventry, G. 1989, "Punishment in the Community and the Victorian Youth Attendance Order: a Look into the Future", *Australia and New Zealand Journal of Criminology*, vol. 22, pp. 179-90.

New South Wales, State Council of Youth 1984 (unpub), The Juvenile Justice System in New South Wales—A Consumer Survey.

New South Wales. Women's Co-ordination Unit 1986, *Girls at Risk: Report of the Girls in Care Project*, Premier's Department, Sydney.

O'Connor, I. 1989, *Our Homeless Children: their Experiences*, Human Rights and Equal Opportunity Commission, Sydney.

---------- 1990, "Can the Children's Court prevent further offending?", *Youth Studies*, vol. 9, no. 3, pp. 12-17.

O'Connor, I. & Sweetapple, P. 1988, *Children in Justice*, Longman Cheshire, Melbourne.

Seymour, J. 1988, *Dealing with Young Offenders*, Law Book Company, Sydney.

Stokes, I. 1992, "Juvenile Justice in Tasmania", *Criminology Australia*, vol. 4, no. 1, pp. 11-13.

W.A. Department for Community Services, Legislative Review Committee 1991, *Laws for People: the Report of the Legislative Review, Department for Community Services*, Perth.

Warner, K. 1987, "Juveniles in the Criminal Justice System" in *The Criminal Injustice System*, eds G. Zdenkowski, C. Rohalds & M. Richardson, vol 2, Pluto Press, Sydney.

---------- 1992, "Legislative and policy overview" in *Perceptions of the Treatment of Juveniles in the Legal System*, eds C. Alder, I. O'Connor, K. Warner & R. White, Report to the National Youth Affairs Research Scheme, National Clearinghouse for Youth Studies, University of Tasmania, Hobart.

Youth Justice Coalition 1990, *Kids in Justice: A Blueprint for the 90s*, Youth Justice Coalition, Sydney.

SOME TRENDS IN OFFICIALLY RECORDED YOUTH OFFENDING: A STATE-BY-STATE COMPARISON[1]

Joy Wundersitz

THE 1980S WITNESSED A GREAT DEAL OF ACTIVITY IN THE YOUTH ARENA, with most States in Australia embarking on major overhauls of their juvenile justice legislation. But despite the significant changes embodied in these new Acts, public concern about what is perceived to be an escalation in youth crime has not been assuaged and the calls for tougher penalties have become more strident.

Media headlines such as "Juvenile Crime Out of Control" (*The Advertiser*, 13 August 1991) have become commonplace and in response, a number of parliamentary enquiries have been launched. Thus, the Western Australian Select Committee into Youth Affairs, the Queensland Parliamentary Criminal Justice Committee and the New South Wales Standing Committee on Social Issues have all been directed to investigate juvenile justice issues. In addition, in South Australia, the Select Committee on the Juvenile Justice System has been taking evidence since August 1991. The most extreme response to public expressions of concern, however, has come from Western Australia, where Parliament responded to a number of public demonstrations calling for a "crackdown" on young offenders by passing the *Crime (Serious and Repeat Offenders) Sentencing Act 1992*. This requires mandatory gaol sentences for young repeat violent offenders.

Yet, despite this frenzy of activity, few attempts have been made to determine whether community fears about escalating juvenile crime are realistic. Have the levels of offending by young people risen to the point where they are "out of control" as is claimed, or is public perception being moulded by a relatively few, but highly publicised incidents? In South

---

[1]. Most of this paper has been extracted from a chapter in *Juvenile Justice: Debating the Issues*, edited by Gale, F., Naffine, N. & Wundersitz, J., published by Allen and Unwin.

Australia, for example, public outrage has been generated by several occurrences (all given considerable exposure in the media) of vandalism on public transport. Similarly, in Western Australia, much of the impetus for the tough "law and order" regime which is now in place has come from the well publicised high speed car chases between police and youths driving stolen vehicles. But are these incidents indicative of an across-the-board increase in juvenile offending?

In an attempt to investigate this issue, this paper will examine trends in officially recorded youth crime across six Australian jurisdictions, using statistics relating to the total numbers of young people processed by the system, either by way of a police caution, panel hearing or court appearance. (The ACT and the NT have been omitted because of the difficulty of obtaining accurate data.) In addition, by comparing these offence statistics across the different jurisdictions, it will seek to determine whether, and to what extent, the situation varies from one State to another. (The data sources are outlined at the end of this chapter).

It should be noted at the outset, however, that any such State-by-State comparison of juvenile crime statistics is fraught with difficulties not only because of variations in the philosophy and practice of juvenile justice from one jurisdiction to another, but also because there is no uniform national data collection system. The compilation of statistics on youth offending remains a State responsibility. In South Australia and New South Wales, where specialised government bureaux exist to compile and publish crime data, comprehensive information is readily accessible. But in other States, information must be gleaned from a variety of sources—in particular, from the annual reports of the different agencies involved in the administration of juvenile justice. Because of this fragmentation, the type and range of data available varies not only across but also within jurisdictions, as responsibility for offending statistics are transferred from one government department to another. Thus even the task of assessing long-term trends in youth offending within the one State may prove difficult.

Moreover, official crime statistics, such as those used in this paper, are a product not only of young people's illegal behaviour but of how the justice system itself operates. To illustrate, an increase in the number of apprehensions may result, not from increased levels of crime, but from an increased allocation of police resources which enable them to apprehend more suspects. Alternatively, an upswing in one type of offence may reflect a concentrated police "blitz" on that type of behaviour (for example drink driving or graffiti) or an increased willingness by the public to report the offence (for example child abuse).

Nevertheless, while official crime statistics do not provide an accurate measure of offending, there should at least be some coincidence between offending patterns and official crime statistics. In other words, if youth crime really has escalated dramatically in recent years, as is claimed, then one would expect some upswing in the numbers of youths being officially processed by the system.

Trends in Recorded Juvenile Offending

Total intervention rates

Overall, only a very small proportion of young people become involved with the formal juvenile justice system in Australia. To illustrate, in 1988-89 (which represents the last year for which information was available for all six States), only 40.8 cases per 1,000 youth population were processed by the juvenile justice system either by way of a formal police caution, a panel hearing or a court appearance: that is, in that particular year, of the total juvenile population in these jurisdictions, only 4.1 per cent were targeted for some form of official intervention. More recent figures, based on 1990-91 data drawn from five States, indicate a slight reduction in this figure to 38.5 per 1,000.

There are, however, some significant variations between the States as illustrated in Table 1.

Table 1

Rate of Official Intervention per 1000 Youth Population

State	*Rate*	*Year*
WA	64.1	1990-91
SA	54.7	1990-91
Qld	39.5	1990-91
Tas.	35.7	1990
Vic.	30.5	1988-89
NSW	27.0	1990-91

As shown, Western Australia recorded the highest intervention rate of the six States while South Australia recorded the second highest. At the other end of the scale was New South Wales. This means that the jurisdiction which has the largest youth population also has the smallest rate of official intervention by the juvenile justice system.

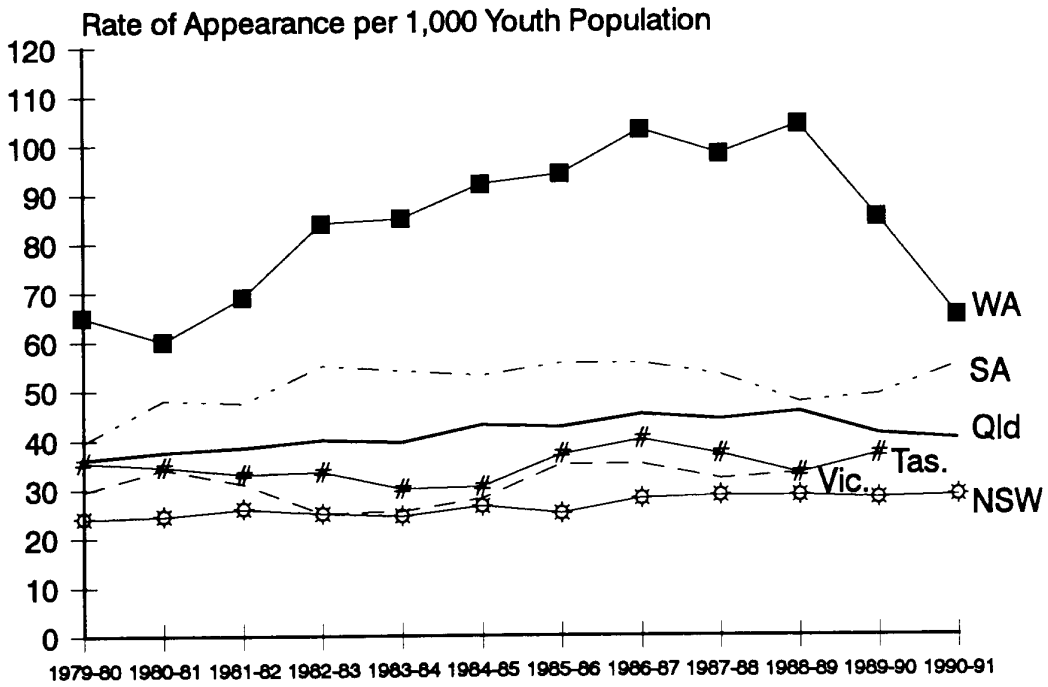
Longitudinal Trends

What then, are the longitudinal trends in recorded youth offending and more importantly, have they escalated in recent years? Figure 1 graphs the total rates of intervention per 1,000 youth population for each Australian jurisdiction from 1979-80 onwards.

Not only does Western Australia have the highest intervention rate of the six jurisdictions, but in terms of longitudinal trends it is totally out of step with the other States. It is the only jurisdiction which recorded a persistently strong increase during the 1980s and it is the only one which, according to the figures, experienced a substantial decrease during the last two years.

Figure 1

Total Number of Matters processed, Australia 1979-80 to 1990-91



At the beginning of the decade (1980-81) the rate of official intervention in Western Australia was 60.3 per 1000 youth population. By 1984-85 it had increased to 92.3 per 1000 youth population and to 103.4 in 1988-89. As a result, the gap between this State and the other jurisdictions became progressively wider. In 1980-81 for example, the Western Australian intervention rate was only 1.3 times greater than the South Australian rate of 47.6. By 1988-89, however, it had risen to 2.2 times that of the South Australian rate, which by this stage had declined slightly to 46.6. As a second point of comparison, in 1980-81, youth offending rates in Western Australia were 2.5 times greater than those recorded in New South Wales. By 1988-89 they were 3.8 times greater.

However, a dramatic reversal of this upward trend occurred in the final year of the decade, when the rate of official interventions dropped substantially from 103.5 to 84.6 per 1000. A further decrease, to 64.1 per 1000, was evident in 1990-91. This reversal seems to have been the result of a combination of factors which came into play at this time. For one thing, 1989-90 marked the first year of operation of the *Children's Court of Western Australia Act 1989* which brought significant changes to the way in which young offenders were processed. Some six months later, the State Government Advisory Committee on Young Offenders was set up to facilitate

stronger inter-agency cooperation and consultation. This Committee, it is claimed, provided the impetus for the establishment or extension of a number of crime prevention strategies and treatment options which were designed not only to reduce the overall levels of juvenile offending, but to provide alternative responses to any offending detected by police. To some extent then, the observed decrease in official intervention rates may be real; that is, it may actually be the case that fewer youths are now being processed by the juvenile justice system in Western Australia than previously.

But there is another confounding factor which must be taken into account: namely, changes in data recording procedures. With the inception of the new Act, responsibility for the administration of the Children's Court was transferred to the Crown Law Department. This transfer, it seems, coincided with a "clean-up" of the data system to eliminate an over-counting problem which had become increasingly evident during the latter part of the decade. In recognition of this change, the Crown Law Department in their *Annual Report* for 1989-90, clearly stipulated that their court appearance figures (which they described as "refined") did not correspond with those published in previous years by the Department for Community Services. To some extent then, the marked decrease in official interventions, at least for 1989-90, may simply be due to changes in data processing. If this is the case, then the very high levels of intervention recorded particularly during the latter part of the 1980s may be artificially inflated. In other words, data recording errors may have given the impression that the Western Australian juvenile justice system was processing far more young people than was actually the case.

What then of the other States? The jurisdiction which provides the greatest contrast to Western Australia is that of New South Wales. It not only recorded the lowest intervention rates throughout the 1980s, but moreover, these rates remained extremely stable during this twelve-year period, increasing only marginally from 24.2 per 1000 in 1979-80 to 27.1 per 1000 in 1986-87, before dropping back slightly to 27.0 in 1990-91. And again in contrast to Western Australia, the major legislative changes which came into effect in New South Wales in 1987 had no apparent impact whatsoever on processing levels.

Of the other States, Queensland experienced a steady but undramatic increase from 1979-80 to 1988-89, after which rates decreased. As a result, at the end of the decade, on a per capita basis, the number of youths being processed in that State either by way of an official police caution or a court appearance was the lowest recorded for some six years.

In Victoria and Tasmania official intervention rates showed some fluctuations during the 1980s. But again, there is no evidence of any substantial increase over this period. In Victoria, rates actually declined during the latter part of the decade, with the result that official intervention rates for 1988-89 were actually lower than those recorded in the early 1980s. (Admittedly, these figures are rather problematic in that they cut out in 1988-89 when cautioning figures ceased to be available. However, court appearance figures up to June 1991 show only a very slight increase over 1988-89 figures).

Like Victoria, Tasmania also experienced a noticeable decline in official intervention rates in the early and mid-1980s, with the rate recorded in 1985 (29.7) being well below that of 1980 (34.9 per 1000 youth population). Figures continued to fluctuate during the second half of the decade, with the rate recorded in 1990 being the same as that in 1986 (namely 35.7 per 1000).

Even in South Australia, the State with the second highest rate of intervention, the situation during this period has remained comparatively stable. While the introduction of screening panels in July 1979 had some net-widening effect, by 1982-83 this had peaked and during the next six years total appearances by young people before Aid Panels and the Children's Courts first stabilised and then decreased. Hence, although there was a slight upturn in 1989-90 and again in 1990-91, the rates of appearances recorded at the end of the period were no higher than those of the early to mid 1980s.

Overall then, there is no evidence from any of the jurisdictions of a massive blow-out in official intervention rates, which must cast some doubts on media claims that juvenile crime is "out of control". Even Western Australia does not support the claim in that, although it experienced a major escalation in recorded intervention rates during the 1980s, this trend has been dramatically reversed in the last two years, with the rate recorded in 1990-91 being lower than that recorded some ten years earlier.

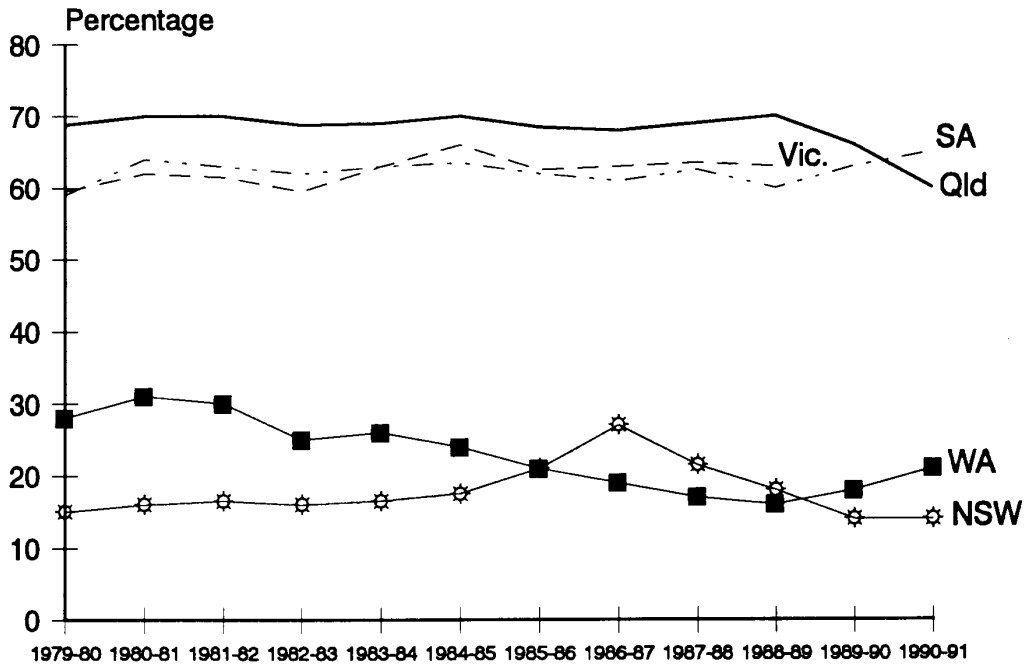
Informal Mechanisms for the Processing of Young Offenders

Over recent decades in Australia there has been a strong shift towards the adoption of informal mechanisms for the treatment of young offenders. These mechanisms have generally been characterised as diversionary procedures, designed to channel first or minor offenders away from formal prosecution in the Children's Court. However, the nature of these informal options varies from one jurisdiction to another. During the period under discussion, (that is, 1979-80 to 1990-91) a system of formal police cautioning operated in the three States of Queensland, Victoria and New South Wales. (In Tasmania, Police Standing Orders allow for formal police cautioning. However, cautions are used so infrequently that this State has been omitted from the following discussion). By contrast, Western Australia and South Australia had in place a system of children's panels, consisting of a police officer and a social worker whose primary task was to warn and counsel the child.

Figure 2 details, over a twelve-year period, that proportion of all youths brought to official notice who were dealt with via these informal processing mechanisms; that is, either by way of a police caution or a panel appearance. Several interesting points emerge. First, Victoria and Queensland, which have had a system of formal police cautioning in operation since the early 1960s, make extensive use of this diversionary option. From 1979-80 to 1989-90, on average some 68.5 per cent of juveniles apprehended each year in Queensland were dealt with by way of a police caution rather than being channelled into the court system. The figure for Victoria was almost as high: over the same period, an average of 61.4 per cent of all apprehended youths were cautioned, while conversely only 38.6 per cent were sent to court.

Figure 2

Proportion of Matters Dealt with Informally, Australia, 1979-80 to 1990-91



By contrast, in New South Wales, where formal police cautions are a far more recent innovation and where Government support has been less forthcoming, proportionately few youths are dealt with in this way. In the first half of the 1980s, on average only 6.1 per cent of youths were cautioned, while the remaining 93.9 per cent went to court. With the introduction of new cautioning procedures in September 1985, the use of police diversion increased substantially, reaching 21 per cent in 1985-86. But this increase was not sustained and by 1989-90 the proportion had dropped back to 12.2 per cent.

Figure 2 also reveals a clear difference between South Australia and Western Australia—the only two States to have opted for a system of children's panels. The proportion of youths selected for processing by Aid Panels in South Australia is comparable to the proportion of youths cautioned in Victoria. From 1979-80 to 1990-91, on average 61.2 per cent of youths in South Australia were dealt with informally without recourse to the Children's Court. This compares very closely with the figure of 61.4 per cent recorded for cautions in Victoria. Aid Panels in South Australia therefore seem to fulfil a similar function (at least in terms of the numbers with which they deal) to that of the more established police cautioning schemes.

This is not the case, however, in Western Australia where Children's (Suspended Proceedings) Panels service a relatively small and, perhaps more significantly, a declining number of young offenders. In that State, the high point of panel operations occurred in 1980-81 when they processed 31.6 per cent of all young offenders. By 1988-89, this figure had been halved to 15.1 per cent.

Panels thus occupy a very different place in the South Australian jurisdiction compared with Western Australia, and a partial explanation for this lies in the different referral procedures operating in the two States. In South Australia, decisions as to whether a case should go to an Aid Panel or the Children's Court are made by Screening Panels, each of which comprises a police officer and a social worker. These mechanisms have operated since July 1979 and the referral decisions are totally discretionary. In other words, all youths (irrespective of age, prior record, offending behaviour etc.) are technically eligible for an Aid Panel hearing if the screening personnel consider it appropriate. By contrast, no such independent screening body exists in Western Australia. Instead, the eligibility of a young person for a panel hearing is pre-determined by rigid criteria. These include the individual's age, the nature of the offence and his/her prior record, together with a willingness and ability to pay restitution to the victim.

Recognition that the panel system in Western Australia has failed to divert sufficient numbers of cases from the Children's Court has prompted that State to introduce a formal police cautioning system. The Child Welfare Amendment Act No. 2 1990 provides the statutory base for this cautioning program, giving police the option to administer either an oral or a written caution. It is too early, however, to assess its impact on juvenile justice processing in this State.

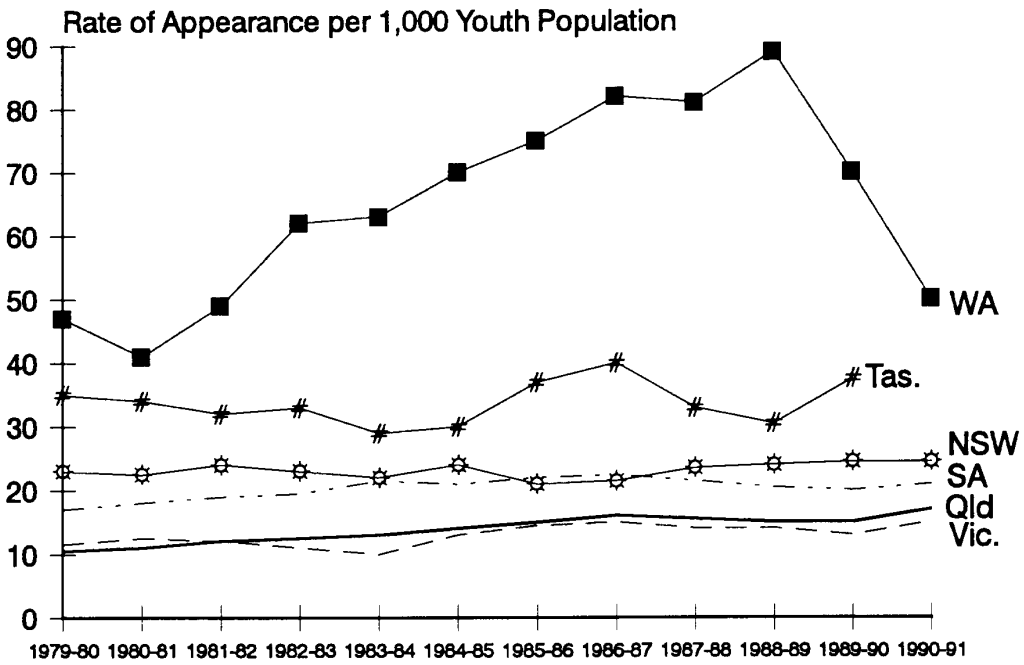
Court Appearance Rates

In view of the significant variations from one State to another in the proportion of interventions dealt with informally by the juvenile justice system, it is useful at this point to examine and compare the role of children's courts across the six jurisdictions.

Figure 3 depicts longitudinal trends in the rate of children's court appearances only. Western Australia is, once again, out of step with all other States. Its very high rate of official intervention, combined with the fact that only a very small percentage of such interventions are dealt with informally by way of Children's (Suspended Proceedings) Panels, meant that by 1988-89, its Children's Court was, at least according to the official statistics, actually processing a higher number of cases than the New South Wales Children's Court (17,487 compared with 15,553). And this is despite the fact that the size of the juvenile population in New South Wales was 3.5 times that of Western Australia. Even with the dramatic decrease recorded during the last two years, it still processes more matters than children's courts in South Australia, Victoria, Tasmania and Queensland.

Figure 3

Court Appearance Rates, Australia, 1979-80 to 1990-91



What then, of these other States? A comparison between children's court appearance rates (as depicted in Figure 3) and total intervention rates (*see* Figure 1) reveals some important shifts in the relative positioning of these other jurisdictions. These shifts are directly attributable to the degree to which informal processing mechanisms are utilised. To illustrate, South Australia and Queensland recorded the second and third highest rates of official intervention respectively. But because some 60 per cent to 70 per cent of all such interventions were dealt with informally, the actual rate of appearance before the children's courts in these two States was comparatively low; lower, certainly, than in Tasmania and NSW where police cautions are used so infrequently.

The State with the lowest court appearance rates is Victoria. Not only does this State have a relatively low rate of intervention to start with, but some 60 per cent of juvenile matters are dealt with outside the formal court setting by way of a police caution. As a result, in 1990-91 its court appearance rate was only 14.8 per 1000 youth, compared with a rate of 50.1 in Western Australia and 23.7 per 1000 in New South Wales, the State with the most comparably-sized youth population.

Type of Offence

Another perception which has received widespread media attention in recent times is that juveniles are becoming more violent. Again, however, an assessment of official crime statistics does not support this argument. In all six jurisdictions examined, property theft dominates the charge profile of young offenders processed by the system. In South Australia, Victoria and New South Wales, this offence grouping accounts for over 50 per cent of all major charges dealt with, while in Tasmania and Western Australia, the proportion is in the mid-40s. Moreover, of the individual property offences listed, it is the generally less serious category of "other theft" (consisting of larceny and shoplifting) which dominates. Thus, in South Australia in 1990-91 "other theft" accounted for 31.5 per cent of all major charges finalised by Aid Panels and the Children's Court, whereas the more serious property crime of break/enter made up only 14.0 per cent. A similar pattern is evident in Victoria and New South Wales where "other theft" constituted 42.6 per cent and 21.2 per cent of all major charges finalised respectively, compared with 15.4 per cent and 14 per cent for break/enter counts. Interestingly, vehicle theft, which has received so much media coverage in recent months (particularly in South Australia and Western Australia) featured in a relatively small proportion of all matters finalised. In South Australia, this offence represented only 8.7 per cent of all major charges dealt with, while in Victoria and New South Wales (the only other jurisdictions where figures for this offence are detailed separately) it made up only 7.2 per cent and 10.2 per cent of all major charges respectively.

In contrast to the dominant position occupied by property offences, offences against the person occur relatively infrequently. They account for only 2.0 per cent of all major charges in Victoria, 4.5 per cent in Tasmania and 7.9 per cent in South Australia. They were most prevalent in NSW, accounting for 14.8 per cent of all major charges dealt with by way of cautions and the Children's Court in 1989-90 (*see* Table 2).

Nor does there seem to have been much change in this charge profile over the last decade or so. To illustrate this, South Australian data only will be used. Figures 4 and 5 depict longitudinal trends in selected offence categories. As shown, the number of assault and robbery with violence charges processed by the justice system in South Australia has increased only marginally over the last decade or so. Nor have there been any overall increases in disorderly behaviour.

In terms of property offences, other theft (which clearly dominates the charge profile of young offenders) has shown some increase over the last two years, but this comes at the end of a five-year period of decrease. Hence, in 1991-92, numbers were still well below those recorded in the mid-1980s. The same trends are evident for break/enter counts: that is, a slight increase over the last two years, but with numbers still lower than those recorded earlier.

Table 2

Type of Offences Involved in Official Interventions: (Cautions/Panels/Courts)

Offence	SA (1990-91) %	Vic. (1988-89) %	NSW (1989-90) %	Tas. (1990) %	WA (1988-89) %
Against Person	7.9	2.0	14.8	4.5	3.3
Against Property	57.2	65.6	53.2	46.5	45.0
Fraud	1.3	0.8	2.6	0.5	2.0
Break/enter	14.0	15.4	14.0)	18.3*)	
Vehicle theft	8.7	7.2	10.2)	)	43.0**
Other theft	31.5	42.6	21.2	25.8)	
Receive/unlaw.pos.	1.7	-	5.2	1.9)	
Damage Property	9.4	6.1	7.7	3.4	5.4
Driving/Traffic	2.2	7.6	3.0	1.4	21.8
Drug	8.2	1.2	3.8	0.8	3.7
Against Good Order	11.2	10.6	8.1	33.4	13.4
Other	4.0	6.5	9.4	10.1	7.4
Total	100.0	100.0	100.0	100.0	100.0
	n=8688	n=13695	n=18445	n=1661	n=34530

Note:
For SA, Vic, NSW and Tas, the most serious offence finalised per case is detailed. For WA, all finalised offences are listed. Queensland was omitted because no offence data was provided for cautioned matters.

* Break/enter and vehicle theft combined
**Break/enter, vehicle theft, other theft, receiving/unlaw. pos. combined.

Figure 4

Offences Finalised by Aid Panels and Children's Courts, South Australia, 1980 to 1991

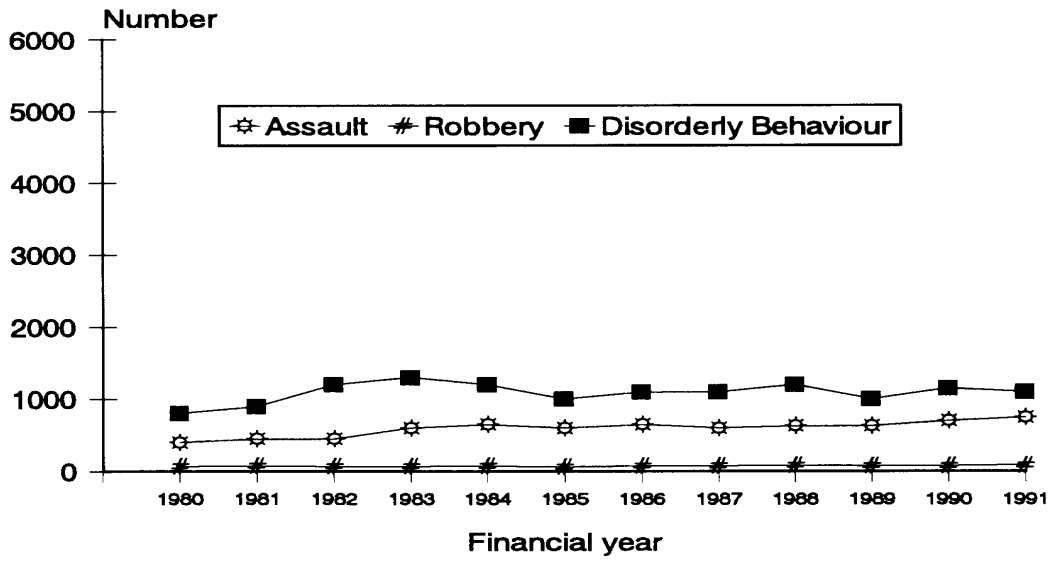
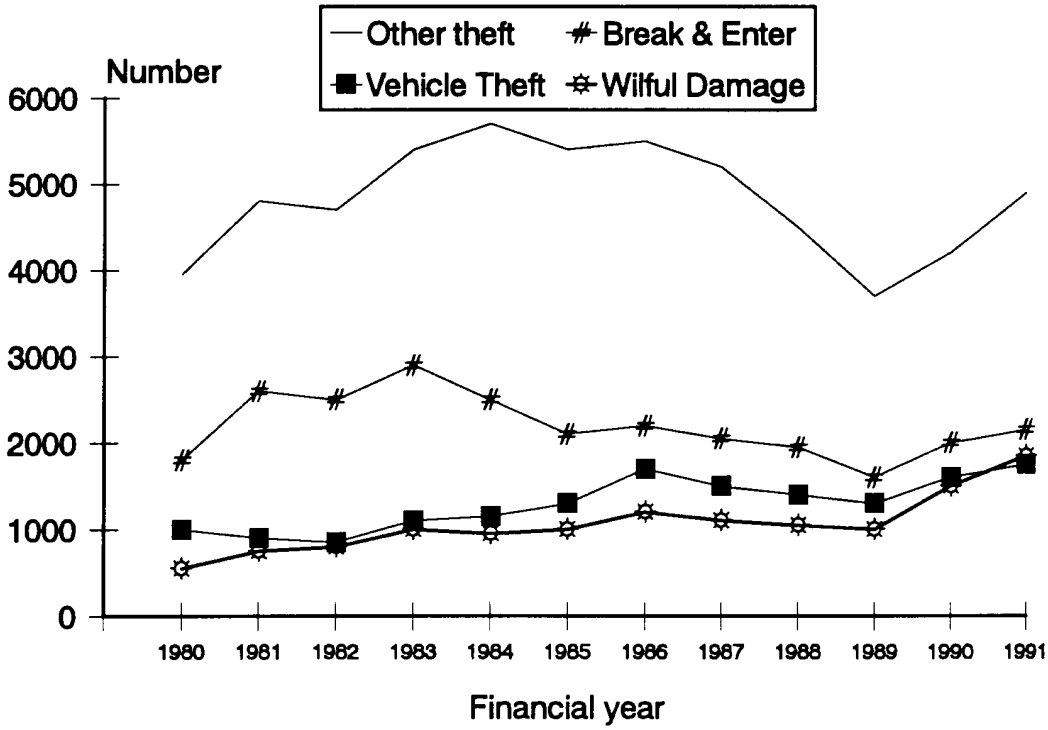


Figure 5

Offences Finalised by Aid Panels and Children's Court, South Australia, 1980 to 1991



The only two offences which have demonstrated a definite increase over the twelve-year period is that of wilful damage (which incorporates graffiti-related behaviour) and vehicle theft. Thus, in 1979-80, there were only 548 counts of wilful damage processed by Aid Panels and the Children's Court. By 1986-87 this had increased to 1,098 and by 1990-91, to 1,876. With respect to vehicle theft, numbers have gone from 1,053 at the beginning of the decade to 1,734 at the end. Both types of offending have received considerable public and media attention and one is tempted to ask whether these two increases have, single handedly, served to place juvenile offending on the political agenda. If so, several facts need restating: first, the extent of increase is not substantial for either offence and second, in combination, both account for less than 20 per cent of all juvenile offences proven in South Australia.

Conclusion

Despite the limitations of official crime statistics and despite the difficulties in any attempt to compare juvenile justice processing across State jurisdictions, this analysis found little empirical evidence to substantiate various media claims that juvenile crime is "out of control" or that it is becoming more serious. Overall, only a very small proportion of young people ever come into

contact with the official justice system. Moreover, in five of the six States examined, the rate of official intervention either remained constant during the 1980s or showed only a slight increase.

However, these statistics do raise other questions. In particular, why do processing rates vary so much from one jurisdiction to another? Why, for example, are intervention rates in Western Australia more than double those of New South Wales? Is it the fact that Western Australian youths are twice as criminal as their New South Wales counterparts and that more South Australian young people engage in criminal behaviour than they do in Victoria? Or are these differences a product of variations in how the different systems respond to offending behaviour? In other words, does a young person's chances of being selected for official processing by the juvenile justice system vary according to his/her geographic location? If so, this raises serious questions about the equitable delivery of justice in Australia.

References

The data sources used in compiling the figures for this paper include:

South Australia:

Youth offending files maintained by the Department for Family and Community Services. These also provide the raw data for the section on juvenile offenders in the South Australian Office of Crime Statistics publication, *Crime and Justice*.

Queensland:

Australian Bureau of Statistics: *Law and Order*, Cat. No. 4502.3.

Western Australia:

a) Australian Bureau of Statistics: *Court Statistics, Children's Court, Western Australia*, Cat. No. 4503.5.

b) Department for Community Services: *Annual Reports*.

c) Crown Law Department: *Annual Report, 1989-90*.

Tasmania:

a) Australian Bureau of Statistics: *Children's Court Statistics, Tasmania -1986*, Cat. No. 4505.6.

b) Australian Bureau of Statistics: *Court Statistics, Tasmania 1988*, Cat. No. 4508.6.

c) Department for Community Welfare: *Annual Reports*.

New South Wales:

New South Wales Bureau of Crime Statistics and Research: *Court Statistics* (to 1986) and *Lower Criminal Courts and Children's Court Statistics, 1987, 1988*.

Victoria:

a) Australian Bureau of Statistics: *Court Proceedings Initiated by Police* (final issue, 1986).

b) Victorian Police *Statistical Review 1987-1989*.

c) *Children's Court Statistics, Victoria 1989, 1990* Attorney General's Dept.

JOBS, NOT GAOLS: A NEW AGENDA FOR YOUTH

Kenneth Polk

THERE IS AN URGENT NEED IN AUSTRALIA, AND INDEED THROUGHOUT THE economically developed world, to develop a new agenda for youth policy generally, especially in terms of the needs of the economically dispossessed. Major structural changes in economic and social life have altered in important ways the shape of growing up, and are reflected in such phenomena as exceptional levels of youth unemployment. Some of the more dramatic effects of these changes result in what are perceived to be high, and perhaps intolerable, levels of youth crime. While these, in turn, tend to create pressures to reconsider juvenile justice policies, it is the present argument that the critical public priorities should not be narrowly conceived around issues of youth crime, but instead should be drawn broadly, and boldly, to address the wider contemporary crises facing young people.

Attempts to formulate juvenile justice policies, in the absence of wider social changes, may have the negative effect of creating a vicious spiral of coercive control. No matter how enlightened, or how informed these might be by such terms as "reintegrative shaming", policies confined to the restricted boundaries of juvenile justice cannot address the more embracing economic problems, and may inappropriately focus attention on the consequences of youth alienation, rather than on its sources.

One cannot but be impressed in talking with young people today, at all social levels, with the general absence of hope, dreams or ambitions. There is a widespread sense of a "denied future" which is, of course, especially concentrated among the dispossessed and unemployed. Solving such problems will not be easy. On the one hand, our present political leaders, both those in, and those who aspire to, office appear by their words and deeds willing to sell off the futures of young people in order to achieve balanced budgets, level playing fields, or reduced account deficits. On the other hand, the economic and social forces themselves are complex, and become easily obscured in the economic rhetoric of the day.

The Emerging Youth Underclass

No amount of political waffling, or confused rhetoric, can blur the extraordinary levels of current youth unemployment in Australia. In Victoria alone, the most recent figures show that in the 16 to 19 years age group, unemployment is at 43.6 per cent, with even higher figures being reported in the northern and western suburbs. While these figures are at what is presumed to be a peak in a cycle of unemployment, it should be remembered that youth unemployment rates have hovered between 15 and 20 per cent for most of the years since the early 1970s. What we are observing is an acute phase of what is clearly a chronic problem for Australian society (*The Age*, 21 July 1992, p. 10).

What accounts for the high levels of youth unemployment? Getting a straight answer to this question is essential if youth policy is to be set on a proper course. Having said that, it must also be pointed out that there are many explanations which have been offered, some of which lead in directions which are not helpful.

There are many explanations because there are a number of factors which weave together to create the present youth crisis. One obvious factor is the current deep recession being experienced in Australia. Without question, a considerable amount of the present joblessness on the part of the young can be explained in terms of the sharp downward turn in the Australian economy over the past two years. Since that is the case, a good proportion of the problem will be solved through the mechanism of economic recovery.

Given this, one of the bits of conventional wisdom from economists is that the primary emphasis for policy on youth unemployment should consist of those efforts to bring about general economic betterment. As one such observer said a few years ago:

> We can assert *unequivocally*, therefore, that the dominating cause of today's *youth* unemployment is the onset and continuation of the current recession in employment *generally*. By the same token there is one dominating solution to high youth unemployment—an end to the recession (Blandy 1979, p. 23, emphasis in the original).

Without question, significant upward movement in the economy would by itself result in the employment of thousands more young people than are currently employed. At the same time, it is short-sighted, and let us add dangerous, to under-estimate the additional structural causes of youthful unemployment that will not be corrected by general economic recovery. In fact, a recent OECD report concluded that present labour market problems, while worsened in the recession are fundamentally structural in origin (*The Age*, 22 July 1992, p. 15).

It should also be kept in mind that any benefits of cyclic economic recovery will occur in the "softer" parts of the population of unemployed teenagers, continuing to leave unemployed the harder to reach group who have suffered because of major rearrangements taking place in the way the Australian labour force is organised.

It is essential to comprehend the truly staggering transformation that has taken place in the process of coming of age in Australia in a very short period of time. In the middle 1960s, slightly over half (59 per cent) of all teenagers were in full-time work. The work career for a strong majority of all Australians at that time began in the teenage years. By the current decade, the proportion of teenagers in full-time work had dropped to under 20 per cent (18 per cent) (*The Age*, 22 July 1992, p. 1).

These stark figures announce a basic transformation in the way individuals enter into life careers. By the 1990s, whole new paths have been forged (for those who are able to negotiate them successfully) such that the start of work is taking place after the teenage years.

Another way of expressing these figures is to observe not where jobs are, but where they are not. In 1966, there were 600,000 Australians in full-time work. By 1992, despite a growth in the teenage population, only 240,000 teenagers were in full-time employment (*The Age*, 22 July 1992, p. 1). These facts suggest two further questions:

- where have the jobs gone?
- where have the young people gone?

The disappearance of full-time teenage work is a result of a number of forces operating on the Australian economy specifically, and developed economies more generally. At the broadest level, there is the overlay of conditions imposed by the general trends that have been captured in the phrase "post-industrialism". In such economies, there are three general trends which weave together, one consisting of the continued long-term downward trend in employment in such "primary" activities as agriculture; a second (which gives its name to these trends) is the sharp downward movement of employment in manufacturing, which had been rising in an earlier period; and then the third trend which sees the continued growth in the service occupations (commerce, government, health, education, housing, and the like). A "post-industrial" society, in other words, is able to support its food needs with less than 5 per cent of its work force in agriculture, and faces what has often become a rapid decline in the proportion of workers in manufacturing, and at the same time has a labour force increasingly concentrated in the service sector.

Running parallel with these movements is the continued expansion of "technical and professional" occupations, and the decline of unskilled and semi-skilled occupations, these trends occurring within all types of industry. Thus while there is an overall decline of employment in manufacturing, within that sector there is taking place a proportionate growth in technical and professional workers, and a decline in the less skilled workers. Some of these shifts are a function of technology, such as when word processors (requiring some amount of training and sophistication) are introduced to replace copy typists in large commercial firms, or when these same word processors replace unskilled file clerks, when advanced communication technologies make redundant low-skilled telephonists or messengers, and so on.

At that same time, in such sectors as retail sales, there is the pronounced move toward a "dual labour market" where a small, professionally-trained, relatively well-paid, full-time and career-oriented managerial staff supervise the work of a large pool of casual, part-time, poorly trained and poorly paid sales staff. Self-service discount retail stores, or franchise fast-food outlets, for example, have generated a new, "McJobbed" labour force of marginal, non-career, short-term workers.

These combined trends serve to squeeze particular kinds of workers out of the labour force by closing off entry portals for unskilled and inexperienced adolescents (in some cases, this includes unskilled entry portals to quite high status occupations, including government service, banking, and commerce and sales). In a way this is a difficult argument because what is being talked about, as in the famous Sherlock Holmes story of the barking dog, is not what is visible, but what is not. It can be demonstrated that there is an overall loss of teenage jobs (as above), and these losses have occurred in specific sections of the labour force. Thus, for one example, it can be demonstrated that thousands of jobs have been lost for teenagers in the Australian Public Service, in the Australian banking industry, and in such specific occupations as secretarial work (for a discussion, see Polk 1989). What is striking about these particular losses is that these are sectors or occupations which overall are growing, while teenage participation in them is being reduced. These are merely the specific manifestation of the overall observation that jobs in general are growing for higher level professionals (that is, positions for adults with qualifications, skills and experience), and declining for those without qualifications, skills and experience.

The process of entry into work careers has changed, especially for those at lower skill levels. Just three decades ago in Australia, entry into most work (including white-collar work of many kinds) took place in the teenage years. Increasingly, the entry level jobs that are being created (at least well-paid, career oriented jobs) are open only to the more qualified and skilled entrants, thus closing the door to teenaged school leavers.

There is nothing particularly new about technological change, and its profound effects on how and where young people find work. The evolving farm technologies of the late nineteenth and early twentieth centuries clearly drove young people by the thousands off farms and into the cities in search of jobs. What is new is that in that earlier period, the "industrial" phase, as the unskilled country young people were forced to find work off the farms, there was to some degree an off-setting growth at a comparable skill level in factory jobs.

In the present "post-industrial" phase, there is growing evidence in the developed countries that when large numbers of young adolescents, at lower educational and job skill levels, leave school to seek work, they are not only not able at that point to gain entry into the career-oriented, well paid sector of the labour force, they experience significant difficulties in ever gaining a good job. One of the most important new figures to emerge is the changing shape of long-term unemployment, where currently those aged twenty to twenty-four long-term unemployed outnumber the sixteen to nineteen-year-

old long-term unemployed by two to one (one in three of the age twenty to twenty-four long-term unemployed have been unemployed for one year or longer) (*The Age*, 1 August 1992, p. 19).

Confronted with the prospect of a constricting teenage labour market, many adolescents have elected to stay on in school. In some respects, in fact, it has been a deliberate policy on the part of governments to push young people out of the labour force and into schooling, thereby reducing embarrassingly high youth unemployment figures. Whereas a mere generation ago most young people in Australia left school by the age of sixteen, now well over 70 per cent are electing to stay on through year 12. In fact, in the short period between 1982 and 1991, the year 12 retention rate in Victoria has gone from 34 per cent to 75 per cent, and for the current 1992 year is estimated at 82 per cent (*The Age*, 1 September 1992, p. 3).

This has caused massive dislocations and alterations in the pattern of schooling. In Victoria, for example, the old technical schools (which were responsible for the preparation of students for traditional blue-collar jobs) virtually have been phased out of existence, and in their stead a more general curriculum has been put in place.

Dislocations occur because there are often consequences which are quite logical and predictable, but nonetheless leave policy makers unprepared. Among these is the emergent crisis concerning the growing squeeze within tertiary education.

One of the major educational tasks assumed in year 12 schooling is to prepare students for entry into tertiary studies. As the numbers expand as a result of the increased year 12 retention, there is a natural flow-on effect to be expected in the tertiary years. As much as this should be an anticipated consequence, politicians (who encouraged youngsters to stay on at school, partly as a device to improve the unemployment figures by removing them from the labour force) have been unwilling to provide the funds for tertiary places which they have encouraged students to seek. Over half of the qualified applicants in Victoria were unable to gain a place in a tertiary institutions in 1992. Currently, it is estimated that more than 50,000 students in Victoria will be denied a place in tertiary education in 1993. To indicate the inadequacy of the political response, the number of new places provided for new undergraduates in Victoria in 1992 was 39,609, compared with 42,868 in 1990 (*The Age*, 1 Sept. 1992, p. 3). That is, our leaders have decreed, in the face of a large increase in demand for places (which their policies of school retention have encouraged), an actual decrease of 8 per cent in terms of available new places for tertiary students.

In the middle of all these figures, it also needs to be pointed out that some young people are emerging successfully from these various cross-cutting trends. Elite students will benefit from the expansion of general educational and job opportunities, especially those students who defer their exit from school until after four or more years of tertiary studies. Even more middle range students will benefit in the sense that a general expansion of education over time will result in more students completing tertiary qualifications and thus gaining access to those sectors of the economy where there is some job growth.

If those at the top of the ladder are able to make reasonable progress, it is clear that those at the bottom face a number of obstacles. The closing off of the aspirations of thousands of teenagers who are unable to gain a foothold in the tertiary sector, merely serves to dump them into the search in the already shrinking pool of full-time teenage jobs, where they will compete with the even less qualified early school leavers. The combination of not enough jobs, and not enough educational places, is a recipe for personal disaster on a large scale indeed. Where does one go when there is room neither in school nor in the labour force? While some find their way into "informal" sectors of the economy, these represent no effective solution, and for many there is the ultimate movement into a "criminal economy" (White 1989).

The Issue of Trouble

There are important implications for these trends on the shape of youthful alienation and crime. There is a long tradition of research which argues for the connection between poor performance at school (a key indicator of early exit) and such issues as disciplinary problems, truancy and delinquency (Coventry et al. 1984; Knight 1975, Wilson & Braithwaite 1977; Polk & Schafer 1972). Those at the bottom of the heap in the school years can be seen as having much weaker bonds which tie them to conventionality, they have much "less to lose", while at the same time the daily routines of stigmatisation tend to begin to build a repertory of grievances against the school and other representatives of conventional life.

It is those at the bottom of the educational system of stratification who are at the greatest risk of a future of unemployment and marginality. In fact, as permanent large-scale youth unemployment becomes a known feature of student life, those doing poorly at school come to face a double bind. Not only is the everyday present life of the school unpleasant and humiliating, they can become demoralised by the growing awareness that they lack any future as well. Whereas in past times one "solution" to the unpleasantness of school was to leave at an early age and enter into work, that very unpleasantness comes to rob the unsuccessful student of any possibility of visions of a successful life upon leaving school. It also takes away any possible rationality which might attach to school work. If doing school assignments comes to be seen as disconnected from any economic payoff, why do it?

Crucial in the adolescent years is the role played by peers. Successful students (that is, those in the upper streams of education who have a reasonable probability of relatively easy access to adult work roles) are likely to be surrounded by a "sponsored youth culture" (Polk 1984) which provides a:

> . . . layer of peer support and involvement . . . that reinforces other bonds that tie the individual students to the school and to a commitment to success now and in the future. These . . . also assure that the successful young persons are insulated from involvement with less successful and potentially unconventional peers (Polk 1984, p. 471).

Such conventional peer cultures only serve to aggravate the already marginal position of the unsuccessful school performers. Isolated from successful students, they have little choice for social contacts but to gravitate toward groups formed of other alienated students. There tends to be a natural affinity in such attraction, since these groups of alienated students begin to form their own social world based on a rejection of at least some of the central tenets of the conventional school culture. In turn, it is these groups that provide the supports for the development of behaviour patterns that result in delinquent and criminal activity. Any number of empirical studies have found that poor school performance, followed by attachment to delinquent peers (for example, Coventry et al. 1984) is one of the strongest predictors of youthful criminal behaviour.

These patterns of vulnerability and trouble take on an even more striking aspect which the issue of long-term youth unemployment is stirred into the pot. Such young people form a new "underclass" population, with distinctive new problems which they must address. Most importantly, as Presdee (1985) has argued from his research in South Australia, the disruption of the traditional connection between school and work in turn forces the postponement for an unknowable period of an array of social experiences connected with becoming adult. Lacking the wage, these young people do not have the economic resources ordinarily expected as necessary to begin to take the tenuous steps toward independent living. Alder (1986) has commented on the corrosive effect of such unemployment on personal identity, since the disruption involved in basic ways creates a range of questions about "Who am I?" which are difficult to answer. Thrown open are a range of decisions that have to do with what work one is to do, when and how one is to establish a family, where one will locate, and literally, who am I to be?

Trapped in an existing culture of trouble and alienation, one answer is to stay within an underclass culture of unconventionality, and then to expand more firmly into criminal activity as a form of income generation. In White's (1989) terms, one choice for the unemployed is to become a participant in the "criminal economy".

If the underclass are trapped in such behaviour, that does not mean that the patterns are static. Quite the opposite, for research on youthful careers of deviance points out two important phenomena. Firstly, as individuals age, if they continue delinquent behaviour, the generally minor criminality of the youthful years becomes more serious as the young people move into young adulthood. Secondly, an important feature which distinguished underclass from more conventional youth is the failure to "desist". Elliott et al. (1986) have pointed out that while there were some differences in the United States in the onset of delinquency between blacks and whites in terms of delinquency, these tended to be small. What was dramatic was that among white adolescents, most stopped engaging in delinquency with the onset of young adulthood. For blacks, on the other hand, in contrast many continued on with their law violating behaviour, such violations tending to become more serious with age.

It is, of course, precisely among young blacks in the United States that the problem connected with being underclass press the hardest (Duster 1987). It

is the blacks who have felt most heavily the load of long-term unemployment, with its consequent disruptions of conventional aspirations for growing up. For ghetto youth, the legitimate choices are few, and the potential for explosive trouble great, as seen by the exceptional homicide rates in some American cities, and the extraordinary explosive events connected with the Los Angeles riots in the summer of 1992. Where there is nowhere to go in life, the paths young people choose to tread can be troublesome indeed.

Where do we go from here?

What is as startling as the dramatic manifestations of youthful underclass life is the inability of current political leaders to speak out in terms of meaningful solutions. Those captured by economic rationalists adopt a number of tactics in terms of the economic components of the problem. On the one hand, some continue to argue that the solution lies in economic recovery, and especially actions taken within the private sector. The blind belief that economic recovery will solve the problems of structural dislocation simply flies in the face of the obvious facts that youthful unemployment, including long-term unemployment, has remained high even in periods of relative economic health. The belief that investing in the private sector will solve this deep conundrum of youthful unemployment in terms of its empirical merit ranks close to belief in the tooth fairy. The sad but important fact is that where large corporate activity has maintained employment in developed countries, they have engaged in a ruthless shedding of unnecessary workers in a bid to stay competitive with foreign competitors (many, of course, solve such problems simply by shifting production overseas to cheaper labour markets). Private sector growth in size and wealth is not accompanied by a parallel growth in the number of private sector employees (Pearl et al. 1978, p. 39).

Some of the current Australian political leaders have adopted a simple strategy for coping with youth unemployment: denial. One of the favourite tricks is to re-compute the figures. Unemployment is calculated traditionally by dividing the number of persons "in the labour force, not working but actively seeking employment" by the "number of persons in the labour force". At any age, there will be some number of individuals who for technical reasons are "not in the labour force". During the adolescent years, one such group are students. By simply putting all adolescents into the equation to add to the base of calculation, the risk of unemployment appears much smaller. Thus, if they can get away with it, our leaders would like to assure us that, in fact, we are not facing a situation where close to half of our youth in Victoria are unemployed, it is "in reality" much closer to 10 per cent.

There are any number of reasons why this reasoning should be rejected. For one, it results in the absurd situation where those workers who are so discouraged that they leave the work force (who are technically speaking not unemployed as far as the government is concerned) are placed in the base of the calculation, actually improving the apparent unemployment situation. For another, it imposes a different standard for viewing young people than is true for any other group. As well, it ignores a whole range of issues concerned

with factors such as that many young people are forced into dead-end part-time work, and as such are not considered as "unemployed". Many in school are there simply as an alternative to wasting time, that is, they have been forced there by virtue of high levels of unemployment.

Instead of accepting such attempts to obscure the harsh reality, what must be underscored is that any measure of youth unemployment is a gross underestimate of the actual levels of unemployment. In Australia, as is true in most parts of the industrial world, young people who attempt to tread what used to be a well worn path out of secondary level education and thence into the work force are often faced with nothing less than social and economic catastrophe in the form of looking at a long life of uselessness, marginality and despair.

The Non-solution of Expanded Juvenile Justice

Since the mix of false beliefs in the benefits of economic recovery and denial are inadequate to solve the problem, what other solutions are politically popular? The approach which has dominated public policy for the underclass since the election of Ronald Regan in the United States is to shift the focus from economic strategies to those based on punishment and control. The self-pronounced realists have argued that since we cannot solve the economic problems of the underclass, we can at least put them in gaol when they act out. In essence, the choice has been gaols, not jobs.

The horrific consequences of these policies are by now clear, or at least they should be after the Los Angeles riots and the debates these have provoked. In the United States today, there are more young blacks in prison than are enrolled in tertiary studies. In states like California, most young blacks will have direct and personal experience with the criminal justice system at some point during their growing up years.

In a word, reality has forced upon us the conclusion that the conservative approach ends up solving neither the economic problem nor does it bring effective control. It generates a politics of divisiveness which splits communities apart, and creates nothing less than an economic disaster for the central cities of the United States. What has been demonstrated is that a state can place thousands upon thousands of its dispossessed young in gaols. What is also clear is that this expensive solution has failed to solve the problem of the urban underclass.

What lessons can be drawn from this? First, it is important to emphasise the limited possibilities of any solution to this general set of problems coming from the justice system. It should be obvious at the broadest level that if the problems are fundamentally economic in nature, then the sparse mechanisms available to justice agencies are insufficient to bring about the necessary change. The justice system cannot create jobs for adolescents, nor can it transform schools.

Nonetheless, giving the high levels of alienation, and the continued problems of youth crime, some response from the justice system will be necessary. It is the present argument that these must be tied to strategies of

both integration and reintegration. The major source of such programs, however, must rest outside of criminal justice.

The Need for Vision

Above all else, there is a need today for vision. Any solution to the problem of the new youth underclass requires the recognition that new pathways must be forged so that dispossessed youngsters have their chance to "be somebody". If new forms of conventional identities are to evolve, ways must be found to provide young people with a wage as a solution to the disruption or discontinuity problem. Work must be in the forefront of any remedy.

But much more is at issue than simply economic independence of work and a wage. The needed policies must focus on the question of viable, long-term careers. A career provides for its incumbent an identity upon which one can base a sense of worth, a sense of contribution, a sense of competence, and a sense of personal control over one's life. Alder (1986) has pointed out that one of the most difficult moments in the life of the unemployed is when they are in a scene when they meet strangers (including potential mates), and they are asked "what do you do?". The dispossessed, like the rest of us, want to be able to answer that question in a way that is positive and worthwhile.

As part of any new political vision, an additional component of persistence and patience will be needed. There can be no quick fix of the present problem of the new youth underclass. How deeply any solution must drive can be seen by comparing the common characteristics of those outside of the labour force with those who have stable work careers. New jobs are likely to go to older persons with tertiary qualifications, with some amount of learned skills, and perhaps with some form of experience gained through training "on the job" provided as part of the educational program.

The attributes of the sixteen or seventeen-year-old school leaver stand in sharp contrast. The specific question then becomes: how is it possible to provide the mix of education, training and experience that gives the underclass youth an opportunity to compete?

At this point we face three problems. The first is the rubbishing that has to be expected when one tries to make things better in this world. Pessimists, "realists", conservatives and cynics have taken firm control of the current public debate. Any attempt to announce that through our collective effort we might begin to solve the problems of youth alienation invites ridicule, invective and denigration.

The second problem is one of imagination. The current so-called strategies both in Australia and elsewhere simply are not imaginative enough. You cannot solve the deep and enduring economic void facing the underclass with short-term solutions. Even one or two-year programs, by themselves, will not be enough. Solutions must recognise that the teenage school leavers literally are competing with persons who often possess a ten-year advantage in terms of skills, experience and qualifications.

The third problem is one of will. Solutions are costly, and above all else require public expenditure. While the actual training and educational programs may, and in fact must, have a heavy component of private sector

involvement, the basic funding and visions will come through public support. One of the most dramatic indictments of current Australian policy is that we are spending far less on active labour market measures than countries such as Germany, Sweden and Canada (only the United States spending is as low as that of Australia, according to a report in *The Age* 16 July, 1992, p. 13).

The message internationally of the potential of private sector leadership regarding jobs is unambiguous. Profitability in the corporate and private world of the developed countries has meant the leaning of the work force. Jobs are shed to assure company survival. It is simply absurd to wait for any job gain benefits to "trickle down" from private sector activity. While a healthy private sector of the economy is an essential ingredient for economic betterment, it is a vain hope to expect that the private sector will be the source of any remedy to the current problem of youth unemployment.

The New Career Pathways Strategy

At the same time, with appropriate planning involving both the public and private sector, new career structures, including new forms of education and training are possible. There are many possible opportunities in the public sector to improve the quality of health care, or education, or of our environment through direct services provided by young people. Wide arenas of new and profitable private activities, in tourism and recreation for example, are possible, involving a wide range of new jobs, with skill levels ranging from low level introductory jobs to those requiring high levels of professionalism and technical qualification (for a general overview of such new career approaches, see Pearl et al. 1978).

In all of this, however, the central role will be played by public agencies which provide the critical infrastructure linking educational programs, work placement (including educational supervision), on-the-job training, and the appropriate credentialing mechanisms as new career paths are forged. The new solutions call not simply for job programs, or even one-year training programs. What is at issue is, literally, new career creation.

As a consequence, one of the main factors in the new career strategy will be education. Whole new pathways of education, training and direct job-experience need to be forged. Much more needs to be done in terms of such ideas as "sandwich" programs involving schooling and work which in fact are well established in terms of precedents within technical training. Much more needs to be done in terms of offering education directly at work sites.

Major involvement will be essential from professional bodies in a range of health, education, welfare, housing, recreation, commercial, technical and other fields so that existing high status professional jobs can be broken out, with many new positions being created along a skill-based pathway ranging from the lowest to highest levels. In the educational field, for example, career lines (linking jobs, training and education) need to be defined which begin with the role of tutor and provide mechanisms for moving step-by-step upward through such positions as teaching aide, teaching assistant, teacher intern, classroom teacher, senior teacher, supervising teacher, and master teacher.

It would be expected that the education and training components for the lower levels of these would be provided by technical training programs through the TAFE sector. As the individual progresses upward, there would be available lower level tertiary qualifications such as Associate Diplomas. These, in turn, would feed into tertiary qualifications as the traditional undergraduate level, and would terminate with undergraduate degrees. For the more senior positions, similar step-by-step pathways could lead through post-graduate diplomas and then masters and doctoral level work.

It is clear in this conception that any new pathway is seen as providing two essential ingredients. First, above all else even at the entry level there is an immediate job, providing a wage, and work which is seen by the incumbent and others as rewarding, meaningful and worthwhile. Second, the pathway provides a sense of an open future, one which could carry the individual over a period of years up to a point where she or he would be at a competitive position (by virtue of qualifications, experience and demonstrated professional skills) with those exiting more tradition tertiary educational programs. While such programs provide jobs, these are emphatically not "McJobs".

Much of the direct experience provides the basic integrative experiences which work counter to the extreme alienation felt by the present mass of dispossessed young. The wage itself works toward a solution to the "social disruption" of life's plans which results from long-term unemployment. Many of the specific career pathways are created in work arenas that provide a sense of personal worth and contribution. Again and again, young people who work in jobs such as recreation aide or tutor have experiences that give them a sense that they are "somebody", that what they are doing makes a difference. The jobs typically are organised so that even at the beginning the incumbent quickly develops a sense of competence, that there are tasks which they can accomplish professionally and skilfully. Through the teaming concept that is essential in such programs (through both the work and training organisation around teams), and through the service provided, the incumbents have a sense that they "belong" to the organisation. Finally, from what they do, the new careerists learns that they can make a difference in their own lives.

The Role of Justice

The deep crisis of youth unemployment creates a set of major policy problems for agencies concerned with juvenile justice. Since youth alienation spins out into various forms of criminal activity, some of them serious, a reasoned response is essential. The wider community wants security, and expects a visible presence of justice when they perceive violations of the peace. Failure to provide a reasoned amount of social control invites an ever-increasing wave of public resentment, and the potential for a demand for a destructive spiral of punitive and coercive (and unsuccessful) youth justice policies.

A major starting point, then, is the recognition that some response from juvenile justice is essential and cannot be avoided. The author would suggest, however, that there be certain principles which guide policy makers.

Firstly, the limits of justice policy must be underscored. The fundamental economic and educational sources of youth alienation do not lie within the boundaries of the justice system. As White (1989, p. 148) states:

> Unless the basic economic and social needs of unemployed young people are met, and the question of full employment placed at the top of the political agenda, there is no hope that offences by young people will be contained. Criminal justice without economic and social justice is impossible.

While the law may be forced to deal with symptoms in terms of trouble and crime, if the basic causes of youth alienation lie in the fundamental issues of youth development, justice policy must be tempered by the certain knowledge that these basic sources cannot be reached by programs located within police, court, correctional or even welfare agencies. By implication, the justice system may have a responsibility to state clearly to the wider community which problems it can solve, and which it cannot.

Secondly, the great tradition of concern for the future lives of young people who come into the justice system should be maintained. Derived from this is the general principle that the least restrictive alternatives that effectively restore some form of control are to receive priority. This means, on the one hand, that the exceptional punishments represented by institutionalisation are to be reserved for those cases where other forms of action are closed. Partly this should come from an awareness that such placements are extremely expensive, and should be treated as a scarce resource, while at the same time it is recognised that there is no evidence that such institutionalisation is effective in any way other than by the incapacitation of the individuals involved.

On the other hand, this also implies that there should be a constant pursuit of "softer" options, located more at the front end of the justice system. As alternatives to harsh penalties, continued consideration of the gentler (but perhaps still firm) forms of control, such as diversion, cautioning, and community panels, merit consideration.

One such approach experiencing an altogether appropriate popular response consists of "reintegrative shaming" suggested in the seminal work of Braithwaite (1989). Braithwaite argues that it is important to avoid wherever possible the harsh and destructive effects of stigmatisation that result from more traditional justice policies. He urges the development of a sense of community responsibility and interdependence whereby it becomes possible to reintegrate offenders:

> . . . back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant (Braithwaite 1989, pp. 100-1).

In assessing the importance of these ideas, it is vital to see the basic grounds for integration of persons that result from the essential interconnectedness of the offender with the rest of the community:

> The families and organizations that are effective at crime control will not be those that are most punitive, but those that sustain communitarian bonds, that secure compliance by expressing disapproval while maintaining ongoing relationships characterized overwhelmingly by social approval. Shame is used to internalize a commitment to the rules instead of punishment being used to tip the balance of rational calculation in favor of compliance (Braithwaite 1989, p. 139).

At the same time, it must be underscored that this process may be quite inappropriate if it is the sole strategy employed in dealing with deeply disadvantaged young people. When adolescents are pushed well out to the boundaries of conventional society by virtue of unemployment and inadequate schools, they lack the basic commitment to conformity that is essential for the process of reintegrative shaming. Arguing for reintegrative shaming approaches may serve, in fact, to deflect attention away from the important social changes that are a precondition for shaming to work.

Put in other terms, attention must be first given to assuring the presence of the structural supports (decent jobs and good schools) for conventional identities before turning to a social control strategy such as reintegrative shaming. Once such supports are in place, and once individuals begin to build a sense that they are "somebody", then the essential pre-conditions for reintegrative shaming are met, and it begins to make sense as a policy for juvenile justice. Without such economic efforts, however, shaming becomes merely another of the new and expanded weapons of social control which have proliferated so widely since the 1960s.

Conclusion

There is a major crisis brewing for many young people trapped at the bottom of the economic heap in contemporary Australia. Structural changes are closing off the opportunities for ready movement into conventional lives as young adults. Hemmed in by long-term unemployment, there tends to build a variety of new and deviant life-styles, parts of which include a drift into youth crime.

There are two basic avenues that public policy can follow to address the problem of crime among the new youth underclass. One is a positive, developmental approach that addresses directly the central issues of employment, education and training. However, unpopular such ideas may be in today's climate dominated by the economic rationalists, these solutions have the advantage of providing an economic solution to what is clearly a structural economic problem.

The second basic approach is to attempt to control the symptoms of youth discontent through the mechanisms of juvenile justice. Justice programs, especially the punitive ones, often have the advantage of apparent efficacy since they attach directly to one or another of the crime "problems" posed by

the underclass. Be they harsh and punitive, or soft and supportive, by themselves control strategies have to fail since they cannot address the basic underlying causes of youth discontent.

Young people growing up today look forward to the same dreams that have guided other generations of Australians. Most want to finish school, get a job, enjoy a period of independence, begin an attachment, and then establish a family. For many in Australia today, this is a broken dream. While our public policy might attempt to cope with the resultant criminal behaviour by means of an expansion of police and police powers, more courts, bigger youth prisons, or such new ideas as reintegrative shaming, a more reasonable approach is to deal directly with the problem by the provision of new forms of education and employment. In a word, what we need are jobs, not gaols.

References

Alder, C. 1986, "Unemployed women have it heaps worse: Exploring the implications of female youth unemployment", *The Australian and New Zealand Journal of Criminology*, vol. 19, pp. 210-24.

Blandy, R. 1979, "Youth unemployment", *Australian Bulletin of Labour*, no. 5, pp. 19-29.

Braithwaite, J. 1989, *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge.

Coventry, G., Cornish, G., Cooke, R. & Vinall, J. 1984, *Skipping School: An Examination of Truancy in Victorian Secondary Schools*, Victorian Institute of Secondary Education, Melbourne.

Duster, T. 1987, "Crime, youth unemployment and the Black urban underclass", *Crime and Delinquency*, vol. 33, pp. 300-16.

Elliott, D.S., Huizinga, D. & Morse, B. 1986, "Self-reported violent offending: a descriptive analysis of juvenile violent offenders and their offending careers", *Journal of Interpersonal Violence*, vol. 4, pp. 472-514.

Knight, T. 1975, "School determinants of delinquent behaviour", in *The Urban School*, ed. L.F. Claydon, Pitman, Melbourne.

Pearl, A., Grant, D. & Wenk, E. 1978, *The Value of Youth: A Call for a National Youth Policy*, Responsible Action Press, Davis, California.

Polk, K. 1984, "The new marginal youth", *Crime and Delinquency*, vol. 30, pp. 439-62.

---------- 1989, "Education, youth unemployment and student resistance", in *Discipline and Schools: A Curriculum Perspective*, ed. R. Slee, Macmillian, Sydney.

Polk, K. & Schafer, W. 1972, *Schools and Delinquency*, Englewood Cliffs, Prentice-Hall, New Jersey.

Presdee, M. 1985, "Agony or ecstasy: broken transition and the new social state of working class Youth in Australia", *Occasional Papers*, no. 1 (August), Centre for Youth Studies, Magill, South Australia.

White, R. 1989, "Making ends meet: young people, work and the criminal economy", *Australian and New Zealand Journal of Criminology*, vol. 22, pp. 136-50.

Wilson, P.R. & Braithwaite, J. 1977, "School truancy and delinquency", in *Delinquency in Australia: A Critical Approach*, ed. P.R. Wilson, University of Queensland Press, St. Lucia.

JUVENILE JUSTICE¾ THE WESTERN AUSTRALIAN EXPERIENCE

Hal Jackson

RARELY DO SPECIFIC LAWS CONCERNING OFFENDING CHILDREN RATE MORE than a passing mention in the public media or amongst the general public. The passage by the Western Australian Parliament in February 1992 of the *Crime (Serious and Repeat Offenders) Sentencing Act 1992* and the associated *Criminal Law Amendment Act 1992* were rare exceptions. The legislation aroused interest around Australia, and in Western Australia has been rarely out of the news since it was enacted. In order to understand the legislation, the factors operating to cause its enactment and the reactions to it, however, the context of the Western Australian experience in juvenile justice must be understood.

First, some points about history, demography and geography. Western Australia is a huge but isolated State. Perhaps in the past isolation has protected most of its European inhabitants from the worst of some social evils, but it has isolated its people from the rest of Australia and the world. Indeed, many small Western Australian towns also lie remote in distance, from Perth and from each other. A significant number of small isolated communities struggle on, in harsh and hostile environments, sustained by mining or fragile pastoral and agricultural pursuits. Isolation and a small population have not tended to make the State a social laboratory as it might have done in South Australia or New Zealand. In lieu of a dissenting and innovative culture they have reinforced conformity to accepted ideas.

History is also important. The original colony, started in the 1820s, did not flourish. From 1850 to 1868 it was sustained by convict labour. The white settlement of some of the frontier areas was even later. White encroachment on Aboriginal culture and lands has been devastating in the South West. The negative impact is more recent in the Pilbara and Kimberleys. Demographically, the Aboriginal people are diverse, and relatively numerous. In youth terms they now approach 5 per cent of the population. Until very recently, and in many cases even now, they have been badly disadvantaged. Racial intolerance has been rife.

Because of the small population, the isolation and the fact that there is only one significant centre of population, small incidents rapidly become big news both in the metropolitan area and in country towns. Numerous media outlets, especially radio and television, chase very few events. In Parliament, electorates are small and often so are margins. Every vote counts.

With the media chasing stories, and the particular history, geography and population, forces wishing to publicise a popular line, "hard nosed" support for law and order agendas is easy to obtain amongst populist journalists and politicians anxious not to offend the electorate. Such a line, for example, has been put frequently and publicly by various police officers and their Union. In this environment, it is hard to establish the view that there is any appropriate response to juvenile offending other than maximum police attention, apprehension, arrest, charge and punishment. Statements like the following from Coventry et al. (1992, p. 15), who also refer to the work of Pitts (1990), are simply untrue of Western Australia:

> It is internationally recognised that the most effective way of achieving long term deterrence and community safety is by preventing the young offender from entering the Criminal Justice system in the first place. The principles of diversion (from prosecution, from court) and custody as a last resort underpin recent legislation enacted in Australia and elsewhere—the assumption being that formal contact with the Criminal Justice system increases the chances of reoffending.

It has been firmly entrenched in the public consciousness of Western Australians that young people commit vast amounts of crime. The impression has been reinforced constantly that an under-resourced police force is fighting valiantly to do the right thing but is constantly being undermined by welfare wimps and social workers and a weak-wristed Children's Court, which either do not understand the problems, or, out of some misguided sympathy with juveniles, refuse to deal with them, or both.

This was the position when the Children's Court was reconstituted by legislation which came into force in December 1989. Let me turn to the reality. Any statistics connected with criminal justice are, of course, notoriously difficult to assess on any sort of scientific basis. (It should be remembered also in looking at statistics that in Western Australia juveniles are treated as "children" in respect of all matters occurring before the juvenile's eighteenth birthday. This is a year older than in Victoria and Queensland, for example.) In addition, unlike some States, motor drivers' licences are issued at seventeen and traffic matters are dealt with in the Children's Court. Thus a significant part of the court's work (usually about 25 per cent of the charges) has been in dealing with traffic matters. The statistical systems which operate around Australia make comparisons difficult, but by any measure the number of charges laid and dealt with has been enormous.

Significantly, in terms of public perceptions, the new Children's Court legislation also gave the court jurisdiction to deal with the whole range of offending matters (subject only to a very small class of cases in which juveniles either elect to be heard in the Supreme Court or District Court, or are charged with adult co-offenders). The most serious (and spectacular)

offences committed by children therefore now usually come before the Children's Court and not before the Supreme Court or District Court as is the case elsewhere.

Prior to the new Children's Court legislation, the Court was hopelessly under-resourced. The Perth Children's Court, at which most of the action took place, was in a converted decrepit primary school with few staff and no modern equipment. The city and suburban magistrates traditionally had worked part time in the Children's Court, and often were without legal training. Yet the system was swamped with matters. Police contact rates, charge rates, remands in custody and detention numbers were, in stark contrast to the public view, extraordinarily high. There were, and are, virtually no controls on arrest established by legislation or by effectively enforced police orders and charging practices such as the need for a senior officer's approval or the screening panels which operate in South Australia. Some legislation is designed to promote use of summons or notice to attend rather than arrest, but this is largely ignored. Legislation banning fingerprinting except in case of arrest promotes arrest, and juveniles have no special regime. A unique Western Australian system of meal allowances also acts as an incentive for police to arrest.

Meanwhile, rates of burglary and car theft in Western Australia were very high by national standards. Of course juveniles (including in our case seventeen-year-olds) made up a very significant proportion of offenders, and were treated by the media as if they were the only ones. Police car chases and the very few escapes from the exclusively high security juvenile detention centres were given great publicity. Juveniles were always shown as offenders, never as victims, and the connections between the two were never explored. Some youths gained much publicity. The extent to which such activities were fostered by the high publicity and "glorification" of offenders by the media and those who used it can only be guessed at.

The legislation reconstituting the court was passed in 1988 but was not brought into effect until late 1989. In introducing the legislation, the Minister for Community Services described one of the main objects of the legislation as being "to reduce the very high rate of juvenile detention in Western Australia". Not all government ministers seemed keen to back up the point made by the Minister, which largely went ignored in the local media which maintained a single-minded focus on punishment as the answer to the perceived crisis.

Meanwhile, the number of charges being laid and the number of children arrested and detained continued to grow. The local media and politicians pursued the issue relentlessly. In April 1990, the Government announced plans to amend the *Child Welfare Act* to permit what is now called in Western Australia formal cautioning. I gave a speech to the Press Club supporting this and was promptly labelled "No Action Jackson". Nervous politicians insisted cautioning was to be used only for the most trivial matters. (Around the same time there was also another debate about the then proposed Australian Ratification of the United Nations approved Convention on the Rights of the Child. Tiny groups of disgruntled adults and small, misled but honest groups

of rural people turned this into an argument centred around the rights of parents, as if the proposals were aimed at undermining the family.)

In one incident a middle-aged Italian man and three young Aboriginal people in a stolen car died after a collision. It was the first of a number of such incidents. Unfortunately, soon after the cautioning furore there was a weekend of violent offending by a group of about six Aboriginal teenagers. On 16 May 1990 the front page of our now thankfully defunct afternoon paper, The *Daily News*, led with this article:

> BACK COMES THE BODGIE SQUAD
> Hard-line police patrols are to take to the streets in a tough new bid to cut juvenile crime ... (Power & Bartley 1990, p. 1).

The following day was, of course, 17 May 1990. (That is the date to which Mr Brian Burdekin later referred in a public debate with the Government, as one on which he alleged there was a police directive to patrols to "harass" "potential offenders".) *The West Australian* led with:

> POLICE DECLARE WAR ON YOUNG THUGS
> Police and the State Government yesterday declared war on young thugs . . . (Winterton & Barrass 1990, p. 1).

Certainly, there was a spate of high-speed chases and of violence in the metropolitan area. Juvenile Aboriginal people were widely blamed and were often involved. There is now significant evidence that amphetamine use by a sub-culture of such people was emerging. In September 1990 the police received a report they had commissioned from Professor Ross Homel on High Speed Police Pursuits (Homel 1990). In 1991 the position continued in similar vein. A very high profile radio program talked of little else. Much was made of an alleged lack of sympathy for victims of juvenile crime, especially by the Children's Court. The fact that a string of overseas specialists had condemned the prevailing orthodoxy made no difference.

In April 1991, following the death of a female cyclist after a collision with a stolen car driven by a white street kid, *The West Australian's* editorial was headed "Police Pursuits Correct Policy". By August 1991, following further car chases and deaths, the radio station I have mentioned adopted as a station promotion the holding of a Rally for Justice. After enormous publicity, the rally was held outside Parliament House. A crowd variously estimated by the media at the time at 15,000 to 20,000 (and later "improved" to 30,000) attended. The radio announcer started with a general denunciation of "social workers, psychologists and do-gooders".

Strangely, there was then a lull for about four months. By an appalling coincidence of facts, during the Christmas break an Aboriginal juvenile escapee in a stolen car involved in a high speed police chase killed a pregnant woman. The Premier was overseas. On 6 January 1992, the Acting Premier issued the following press release:

> Western Australia's hard-core juvenile criminals will be subject to the toughest laws in Australia under measures approved by State Cabinet today.
>
> Repeat juvenile offenders will be jailed at the Governor's pleasure in addition to any other penalty.
>
> Where an offence involves violence, no consideration of release will be possible before a minimum of eighteen months.
>
> Car thieves who cause death or serious injury will face a maximum twenty years imprisonment.
>
> Acting Premier Ian Taylor said the courts would also revive a legislative direction that for the protection of the public these juveniles should be sentenced as adults.
>
> Drafting of the new legislation would receive top priority and when finalised would be subject to a special sitting of State Parliament.
>
> Mr Taylor said Premier Carmen Lawrence, with whom he had discussed the measures, fully endorsed the action.
>
> "Today's Cabinet decision is a natural progression of measures which have already been taken by the Government—which included the highly successful targeting of hard-core offenders", Mr Taylor said.
>
> "Targeting has shown there are about 100 hard-core offenders. The Government has decided there is now no option but to excise them from society—they are on notice that on the next offence, they will be jailed at the Governor's pleasure and not be eligible for release until there is a recommendation from the Parole Board (Taylor 1992).

and so on for another two pages.

The figure of 100 seems to have come from a survey of metropolitan juveniles involved in repeated car theft. The Royal Commission into Aboriginal Deaths in Custody might as well not have written its report. It was later reported that the proposals were formulated at a barbecue. As with earlier government announcements in relation to a Victims' Charter and later announcements in relation to creating a Youth Justice Bureau, it would seem that the announcement was made without departmental or judicial consultation, leaving the implications to be sorted out later.

By 29 January a first copy of two draft Bills had been prepared. Parliament was specially recalled to deal with this legislation which was passed on 7 February, to commence on 9 March. The final result is significantly different from that announced a month earlier and from the first drafts. Then there had been claims that up to 500 juveniles could be caught by the proposals. By February, the Premier was talking of forty. Parliamentary debate was extremely lengthy. The last minute changes included provisions responding to allegations that, contrary to United Nations instruments, juveniles were treated in one Bill more severely than adults. The provisions

were extended to adults. Responding again to concerns that sentences for juveniles might involve mandatory executive review, review for juveniles was transferred to the Supreme Court. The Parole Board retained such powers for adults. A two-year sunset clause and quarterly ministerial reports to Parliament were added.

The legislation is too long and complex for analysis here. However, several articles have appeared in print (*see*, for example, Wilkie 1992). Both the Department for Community Services and the Youth Legal Service prepared brief "lay" summaries for juveniles "at risk" and others.

The legislation has been much considered and much criticised by, amongst others, a non-parliamentary committee set up for the purpose by the only Aboriginal in Cabinet, Hon Ernie Bridge MLA, and by the Legislative Council Standing Committee on Legislation, chaired by a government backbencher.

At the same time that these events were happening, the Legislative Assembly Select Committee on Youth Affairs, which had been established in October 1990 and to which a petition circulated at the above-mentioned rally had been referred, brought down a Discussion Paper (Western Australia 1992a). Then in June 1992 it issued a report which adopted an approach fundamentally at odds with the legislation (Western Australia 1992b). One of the benefits of the legislation must surely be that a number of Members of Parliament in these Committees have had the opportunity to study juvenile justice issues in much greater depth than might otherwise have been the case.

Amongst the critics of the legislation might be included the Australian Government's Attorney-General and the federal Minister for Aboriginal Affairs, as well as former Prime Minister Whitlam, Human Rights Commissioner Burdekin and Australian Law Reform Commissioner Chris Sidoti, who gave a paper on "The Commonwealth's Responsibility for Aboriginal Young Offenders" at this Institute's Conference on Aboriginal Justice Issues in Cairns in June. Others include The Law Council of Australia, Moira Rayner, now Equal Opportunity Commissioner for Victoria, the International Commission of Jurists and the Aboriginal and Torres Strait Islander Commission. In Western Australia, the legislation was criticised by a variety of bodies and individuals, including the Western Australian Council of Social Service, Professor Richard Harding, formerly Director of this Institute, a number of Aboriginal groups, the Anthropological Society of Western Australia, a visiting psychologist, Dr Roger Mills, academics specialising in youth and Aboriginal issues such as Rob White and Meredith Wilkie, church groups and spokespersons, the Youth Affairs Council, judges, including myself, youth workers and, perhaps embarrassingly for the Government, the ALP State Executive, Young Labor and the Society of Labor Lawyers. Even *The West Australian* has editorialised that changes should be made.

The Minister responsible for reviewing the legislation under the Act has published two reports. In the first, he acknowledged a number of concerns and undertook that

> the Government will:

(a) review the list of offences in Schedule 1 of the Act;

(b) clarify the definition of "conviction appearance";

(c) refer the issue of the scrutiny of policy charging practices to the Commissioner for Police; and

(d) seek further advice in relation to the international treaties (Western Australia Review Committee 1992, p. 11).

At the time of writing, his second quarterly report had not been tabled in Parliament (and neither had the second report of Mr Bridge's Committee). No changes had been announced.

However, whilst much criticised, the legislation has undoubtedly been publicly perceived as "tough" and the Government has claimed it as effective. Interestingly, such a claim was made by the Minister for Police, one of the strongest advocates of such approaches, well before the effects of the legislation could possibly have been measured. On 13 March (four days after the Act commenced) it was reported that car theft and high speed chases for January and February were down on the previous year. Mr Edwards claimed the figures were evidence that the Government's tough juvenile justice legislation had already had an impact! He believed two other factors—the work of the CIB motor squad task force which was formed in May last year to combat repeat offenders, and the work of vehicle manufacturers to fit new cars with anti-theft devices, had also contributed to the falls.

On 2 May *The West Australian* reported that:

> Juvenile car thefts have dropped by 40 per cent in the first three months of this year, according to figures released yesterday.
>
> Police Minister Graham Edwards said one of the main reasons for the fall might be the police cautioning system introduced last August.

In August the *Sunday Times* reported:

> The number of high-speed chases by police in Perth has almost halved since tough legislation for juvenile offenders was introduced in January.
>
> Government ministers, though still cautious, say the controversial legislation appears to be a deterrent.
>
> Early figures released yesterday by Police Minister Graham Edwards show there was a general decline in the type of offences covered by the legislation.
>
> But Mr Edwards warned the figures were for a short period—the seven months since the legislation was passed compared with the same time last year.

In fact since the figures given were from 1 January to 31 July, and as the legislation only commenced in mid March, the passage is very misleading. In reality, car theft and car chases were higher in March and April than in

January and February. The *Sunday Times* on 16 August 1992, reported Police Minister Graham Edwards as saying that the legislation, coupled with other initiatives, had been useful. Young criminals had decided, apparently, that Western Australia was not the place to be and had moved interstate. Vehicle manufacturers had made attempts to make cars more secure and people generally were becoming more security conscious. Others have claimed credit also for the effect of community policing and Department for Community Services preventative programs.

Any deterrence, if such there is, cannot be the effect of actual sentences handed down because no-one, adult or juvenile, has yet been sentenced to a mandatory or indefinite term. (There may have been a handful dealt with under the so-called Sentencing Guidelines but if so, the number affected and circumstances are unknown to the Minister, the public and the author.) Has there been a reduction in offending anyway? The Minister for Justice has claimed so, referring to car theft, high speed chases and burglaries. Other major categories, for example, armed robberies, arson, serious culpable driving or sexual assaults have not been so quantified. (Serious drug offences, strangely, do not come under the Act.)

Even in the categories mentioned by the Minister, it is clear as figures available to me go, that car theft peaked in March 1991 and thereafter dropped steadily and has since levelled out. The figures for police pursuits raise even more problems. It has been suggested (although I cannot verify this) that car chases might be lower because of changes in policing. No-one has attributed any change to matters such as drug availability, or a lower media profile, or the fact that detention numbers have been gradually reducing, although sentences for a small number of serious offenders seem to have increased.

As to whether there have been a significant number of repeat offenders in custody at any one time, in June some police were reported as giving a cyclical explanation:

> Repeat juvenile car thieves released from detention centres regularly cause increases in high-speed police pursuits.
>
> Officers and the WA Police Union say chases usually occur in three to six-month cycles when car thieves are released from detention, after completing sentences for similar offences (*Sunday Times*, 21 June 1992).

Only my local suburban paper placed trust in the weather.

The truth is that such effects as the Government claims, if they exist at all, are unquantifiable. Only a few things are certain, and one is that the Act contains the capacity for gross injustice.

As a court administrator, I am delighted, however, to say that contrary to my expectations we have not had a blowout in not guilty pleas and trial delays. One fear is to the contrary—that juveniles might plead guilty when before the Court on other matters in order to reduce the chance of two "conviction appearances" rather than one. The total illogicality and obscurity of the concept of a "conviction appearance" will be lost on anyone who is not

familiar with our labyrinthine and outdated legislation. One is tempted to refer to Luke 23:34.

Meanwhile, perhaps it would be unfair to leave the impression that all is gloom and that no gains have been made in the last three or five years. I started this paper by referring to the very high charge, arrest and detention rates in Western Australia, and the decrepit state of its system when the new legislation was passed in 1988 and when I started in 1989. In fact, although a very great deal of public media and political time and attention has been given to these laws, both locally and interstate (with features for example, in *The Australian*, *The Bulletin* and *Time Australia*) they run contrary to a significant number of other developments in Western Australia and give quite a misleading view of trends there.

For example, Paul Bartholomew's paper will deal with two areas of significance in those developments, the first hesitant steps toward preventative and diversionary moves, and Det. Inspector Bob Kucera of the Western Australia Police is to talk on policing juveniles. In that area also, steps have been taken towards preventative and diversionary strategies with community policing, school police, greater interagency cooperation and some support for formal cautioning.

Outside those matters there have been significant physical improvements. The Perth Children's Court has been provided with a new purpose-built building, staff, equipment, library etc. A court is being built to service the new northern suburbs. A new remand centre will open next year to replace the existing catastrophe. Detention centre programs and facilities are being upgraded, although within totally inappropriate physical and security limits. A multi-agency and community advisory committee has been established.

In addition to cautioning, charge numbers have been reduced by increasing the minimum age of responsibility to ten; increasing the upper age for the Children's Panel to eighteen (although many formal cautions relate to matters which would otherwise go to Panel, and in any event, Panel referrals have been steadily falling for years); use of infringement notices for some liquor matters, and, in the very recent past, introducing administrative mechanisms for collection of some traffic misdemeanours. Some eighteen months ago a pilot scheme for victim/offender reparations was introduced at three locations and is to be extended. Alternative to custody schemes, including a cattle station and farm programs, are well established. Interagency cooperation has started to be seen, at least in some areas. Some innovative community based rehabilitative schemes, such as the Worksyde scheme, CY Mediation program, Yirra drug rehabilitation scheme and so on have been introduced. Nonetheless, by the standards of some other places, change has a long way to go.

However, the passage of the laws I have referred to represent a case study of the interactions between police, juveniles, politicians, media and public, and the impact thereof on the criminal justice system affecting juveniles. This paper has been devoted, therefore, to that matter and not to some of the better things which have been done. I leave them to my colleagues.

References

Bartholomew, P. 1993, "Preventative and diversionary programs in Western Australia", *National Conference on Juvenile Justice*, eds L. Atkinson & S.A. Gerull, Australian Institute of Criminology, Canberra (*see* pp. 449-56 of this volume).

Coventry, G., Muncie, J. & Walters, R. 1992, *Rethinking Social Policy for Young People and Crime Prevention*, National Centre for Socio-Legal Studies, Discussion Paper Series no. 1, La Trobe University, Melbourne.

Duffy, J. 1992, The *West Australian*, 2 May, p. 11.

Hallahan, K. 1988, Second Reading Speech on Children's Court of Western Australia Bill, Western Australia Parliamentary Debates (Hansard), p. 1091.

Homel, R. 1990, High Speed Pursuits in Perth (unpublished), a confidential report to Police Department of Western Australia.

Jackson, H.H. 1990, "All for law and law for all", an address to the Press Club of Western Australia, mimeo.

Malan, A. 1991, "Thousands share the anger at justice rally", *The West Australian*, August.

Pitts, J. 1990, *Working with Young Offenders*, MacMillan, London.

Power, B. & Bartley, J. 1990, "Back Comes the Bodgie Squad", *Daily News*, 16 May, p. 1.

Taylor, I. 1992, Acting Premier of Western Australia, Press Release, January.

Western Australian. Select Committee of the Legislative Assembly on Youth Affairs 1992a, *Youth and the Law*, Discussion Paper no. 3, Legislative Assembly, Perth.

Western Australian. Select Committee of the Legislative Assembly on Youth Affairs 1992b, *Final Report*, Perth.

Western Australia. Review Committee 1992, *Crime (Serious and Repeat Offenders) Sentencing Act 1992*, First Report, Review Committee, Perth.

Wilkie, M. 1992, "*Crime (Serious and Repeat Offenders) Sentencing Act 1992*: a human rights perspective", Statute Note, *University of Western Australia Law Review*, vol. 22, no. 1, pp. 187-96.

Winterton, H. & Barrass, T. 1990, "Police declare war on young thugs", *The West Australian*, 17 May.

Wundersitz, J. 1993, "Some trends in officially recorded youth offending: a state-by-state comparison", *National Conference on Juvenile Justice*, Conference Proceedings No. 22, eds L. Atkinson & S.A. Gerull, Australian Institute of Criminology, Canberra (*see* pp. 53-66 of this volume).

JUVENILE JUSTICE IN NEW ZEALAND[1]

Michael J.A. Brown

ON 28 MAY 1989 ROYAL ASSENT WAS GIVEN TO THE NEW ZEALAND Children, Young Persons and Their Families Act 1989. That Act came into force on 1 November 1989. The new law introduced principles and procedures for dealing with young people who offend against the law which are in contrast to previous enactments—the Child Welfare Act 1925 and its successor, the Children and Young Persons Act 1974.

The new law, as in the case of its predecessors, covers children and young persons in need of care and protection as well as those who offend against the law. There is, however, a jurisdictional separation between those two groups to the extent that measures for dealing with young offenders can be seen as *an act within an act*, without the blurring of principles and processes between care and protection and youth justice which characterised our previous approach.

The original legislation is, at first blush at least, a formidable enactment originally with 469 sections. It has been described by my brother District Court Judge B. D. Inglis QC as follows:

> The Act is an over-refined procedural and legal nightmare, but its principles and intent are perfectly clear. The Court should be slow to look for technical obstacles, but instead should encourage those concerned with its administration to ensure that young offenders—who may be at a turning-point in their lives—are dealt with quickly, fairly, with the support and assistance of their families, and within the protection of the law *Police v. L.* [1992] DCR 440, 443.

Preamble to Act

It may be useful to set out in full the preamble to the Act which reads:

[1]. Acknowledgment: I wish to acknowledge the assistance of Melissa Perkin, Judges Research Counsel, Auckland District Court, in the preparation of this paper.

An Act to reform the law relating to children and young persons who are in need of care or protection or who offend against the law and, in particular,

a) To advance the wellbeing of families and the wellbeing of children and young persons as members of families, whanau, hapu, iwi, and family groups;

b) To make provision for families, whanau, hapu, iwi, and family groups to receive assistance in caring for their children and young persons;

c) To make provision for matters relating to children and young persons who are in need of care or protection or who have offended against the law to be resolved, wherever possible, by their own family, whanau, hapu, iwi, or family group;

d) To make provision for the appointment of a Commissioner for Children;

e) To repeal the Children and Young Persons Act 1974.

Definitions

Again it might be helpful to define some of the terms used in the Youth Justice portion of the legislation.

"Child" means a boy or girl under the age of fourteen years.

"Director-General" means the Director-General, Social Welfare under the *Department of Social Welfare Act 1971*.

"Tangata whenua", the physical, social and spiritual well-being of the individual is inextricably related to the sense of belonging to their whanau, hapu and iwi. In turn the perception of what constitutes harmony or well-being is tribal and based on the tribal law, customary rights and traditions held in common and sanctioned by whanau, hapu and iwi.

"Whanau" is the smallest social unit within the biological family and literally means "to give birth". The term covers the two preceding generations of grandparents and parents, the generation of the person concerned and the two succeeding generations of children and grandchildren.

"Hapu" or "pregnancy" is used to denote the extended family group. It expresses the birth of respective whanau from common ancestors and stresses the blood-tie which unites them for the purpose of cooperation and in the past, active defence. Over generations the number of hapu has swelled. Groups left the original settlement and took up land in neighbouring localities.

"Iwi" or "bone" refers to all hapu descended from common ancestors and thus related by blood. Therefore, whanau, hapu and iwi are hereditary rights and all members of an iwi are related to each other by blood descent. A record of common blood-ties is preserved in whakapapa or whanau genealogies which form oral registers of births and marriages extending back to the common ancestors of the iwi.

"Whakapapa" is the basis of relationships within whanau, hapu and iwi. A structure that is not based on whakapapa or blood-ties is not a whanau. Whakapapa is also the only basis upon which Maoris can challenge each other and any doubt in the relationship between two members of an iwi is settled by the recital of the lineage of the person concerned.

"Family group" in relation to a child, or young person, means a family group, including an extended family:

a) in which there is at least one adult member -

   i) with whom the child or young person has a biological or legal relationship; or

   ii) to whom the child or young person has a significant psychological attachment; or

b) that is the child's or young person's whanau or other culturally recognised family group.

"Family group conference" in relation to Part IV of the Act, means a meeting convened or reconvened by a Youth Justice Coordinator in accordance with section 247 or section 270 or section 281 of the Act.

"Residence" means any residential centre, family home, group home, foster home, family resource centre, or other premises, approved or recognised for the timebeing by the Director-General as a place of care or treatment for the purposes of the Act. It includes any place of care or treatment so approved, whether administered by the Crown or not.

"Secure care" in relation to a child or young person in a residence established under section 364 of the Act, means containment in that residence within a locked room or enclosure with visible physical barriers.

"Young person" means a boy or girl of or over the age of fourteen years but under seventeen years, but does not include any person who is or has been married.

"Youth Advocate" means a barrister or solicitor appointed pursuant to section 323 of the Act to represent a child or young person.

"Victim" means a person who "through or by means of an offence, suffers physical or emotional harm, or loss of or damage to property; and where an offence results in death, the term includes the members of the immediate family of the deceased".

Youth Court Jurisdiction

Provisions of the Act

The Act established a special Youth Court to replace the Children and Young Persons' Court, as a specialist court of the District Court to deal with youth justice cases. Care and protection cases are dealt with in the Family Court which is also a specialist division of the District Court.

Background

The Children and Young Persons Act 1974 established a single Children and Young Persons' Court to deal with all matters affecting persons under seventeen years, including both care and protection and offence matters. The main criticisms of that system were that:

- the Court was inadequately resourced to deal with the specialised issues that came before it;
- too many youth justices cases came before the Court, some of them not particularly serious;
- there was a tendency to confuse welfare and justice issues and to apply welfare solutions to cases of youth offending;
- the stigma of a criminal jurisdiction also attached to the care and protection cases.

Between 1984 and 1989 a number of options for reform were canvassed. The main options were:

- to keep the Children and Young Persons' Court within its present jurisdictions but provide better resources, including specially trained judges and better support services;
- to transfer care and protection cases to the Family Court and establish a special Youth Court as a separate section of the Family Court, to deal with young offenders;
- transfer care and protection cases to the Family Court and establish a special Youth Court as a separate branch of the District Court, to deal with young offenders.

Issues

In deciding among these options one major issue and two related smaller issues were weighed up. These were:

- whether youth justices cases should be dealt with in the same court as care and protection cases, or whether welfare and justice issues should be separated;
- whether the problems with the Children and Young Persons' Court could be resolved by providing more resources to that Court;
- how problems of overlap and coordination between the Children and Young Persons' Court and the Family Court should be resolved.

Alternative philosophies

Traditionally, New Zealand adopted the view that delinquency stems from identifiable causes, such as family problems, and that treatment is possible. Early intervention—including assistance to the family, or, if necessary, removal from the family—has been regarded as the best way of dealing with young offenders.

The new legislation represented a shift in thinking on these issues, based on the views that:

- offending behaviour is a relatively common occurrence with many young people, but few progress to the status of serious offenders;
- intervention in the form of prosecution should be avoided or delayed if possible, as this can make the situation worse by introducing young persons to unhelpful associates and practices.

Whether a child or young person needs care or protection is a separate issue from whether or not he or she has committed offences against the law. Offending behaviour should be dealt with as just that, not as something else.

Arguments for the new law

The decision to establish a Youth Court as a special branch of the District Court was based on the view that the interests of young offenders are best served if offending behaviour is viewed from a justice not a welfare perceptive. While it is acknowledged that offending may be a symptom of family difficulties, society judges that young people of fourteen or older are responsible for their actions, including offending behaviour and should have the right to a fair hearing and to "due process".

Dealing with care and protection and offending cases in the same court can, and did, result in a blurring of the distinction between welfare and justice, leading to unwarranted intervention in families, including placing young people under social welfare guardianship for indeterminate periods.

While there is and will be some stigma attached to an appearance in a Youth Court, this is not inappropriate to a court exercising criminal jurisdiction. At the same time court action should be an action of last resort, to be taken only when other possible actions have been considered and rejected. It was resolved also that the Court should be properly resourced as a specialist jurisdiction with its own principal judge.

The following are features of the new court:

1 No judge may be designated a Youth Court Judge unless he or she is suitable to deal with matters within the jurisdiction by means of his or her training, experience and personality and understanding of the significance and importance of different cultural perspectives and values.

2 All young persons must be legally represented, with the court appointing a youth advocate when no private arrangements have been made.

3 Courts may, in addition, appoint lay advocates to ensure the court is made aware of all cultural matters relevant to the proceedings.

4 The family group has a status in any proceedings and has the right to make representations.

5 Hearings in the Youth Court are to be held separately from any other court and, by scheduling hearing times, courts are to minimise waiting times, the association of offenders awaiting hearings, and the extent to which parents are obliged to congregate in common waiting facilities.

The Act specifies that young people and their families should be involved not only in family group conferences but in the Youth Court itself. For example, judges should not make court orders unless families have been informed of this possibility and have been given an opportunity to speak to the court about it. The Act also makes it clear that the judge is required to explain the court's procedures and actions fully to young people and their families and in a manner and language that can be understood by them.

Provisions relating to youth court procedures

A discretion is vested in the court to dismiss information where the elapsed time between the date of the alleged offence and the hearing has been unnecessarily or unduly protracted. Statutory authority exists for the appointment of youth advocates and also lay advocates. Specific provisions list persons entitled to be present at a hearing and to make representations.

The Youth Court can call for medical, psychiatric and psychological reports. When certain orders are contemplated which involve interference to the liberty of the young person, social worker reports are required and must be accompanied by plans setting out how orders are to be implemented.

Cultural and community reports may be sought, and written statements of the terms of certain orders are to be given to the young person before he or she leaves the court (sections 321 to 340).

Objects of the Legislation

Section 4 of the legislation states the objects of the Act. These include promoting the well-being of children, young persons and their families and family groups by providing services which are accessible and culturally sensitive, and appropriate to their needs; the provision of assistance for families and kinship groups in caring for their children and young people; and the provision of protection for children and young people. With respect to matters of youth justice, the stated objects are the accountability of young offenders, with an acknowledgment that offenders needs be recognised and action taken. An object which covers the whole ambit of the Act is that issues are dealt with in a culturally appropriate manner.

Principles

The principles are set out in two sections of the legislation. Section 5 sets out general principles. These recognise the importance of family participation in decisions affecting the child or young person and the importance of maintaining and strengthening the family relationship where possible. Recognition is accorded also to the importance of the effect of a decision on the child or young person, and its effect on the stability of the family, as well as the wishes of the child or young person. The importance of the familial relationship is recognised also in that the support of parents, guardians or caregivers, and the child or young person, should be obtained in relation to the exercise of powers under the Act. The child or young person's sense of time is regarded as significant, with the direction under section 5 that decisions affecting that person should be implemented within a time frame appropriate to his or her sense of time.

Section 208 sets out principles which are a guide to the exercise of power by the court in the youth justice arena. It recognises a philosophical change, in that intervention, in the form of prosecution, should be avoided or delayed if possible. Included here is the provision that criminal proceedings should not be instituted if alternative means are available. This is subject, however, to the interest of the public. Recognition of a problem which existed prior to this Act is made by the principle that criminal proceedings are not to be instituted solely to provide assistance for services to advance the welfare of the child or family. Again, the importance of the family is emphasised in that measures for dealing with offending by a child or young person are to be designed to strengthen the family and to foster the ability of families to deal with offending by children.

A recognition of a wider sentencing trend is made in the principle that a child or young person who commits an offence is to be kept in the community as far as is practicable and consonant with the need to ensure the safety of the public. Another recognition of a general sentencing trend exists

with the principle that a child's age is a mitigating factor in determining whether a sanction should be imposed, and the nature of that sanction. Another sentencing principle is that sanctions imposed should try to maintain and promote development of the child within the family, and take the least restrictive form appropriate. Recognition of the victim is another principle, in that measures for dealing with children are to have due regard to the interests of victims.

Finally, the vulnerability of children is recognised, in that they should be entitled to special protection during any investigation.

General Duties

In order to obtain these previously enunciated objects, the Act sets out general duties which lie on the various participants. Comprehensive obligations are specified to be the responsibility of the Director-General.

Parents, guardians or caregivers are entitled to be advised of decisions significantly affecting any child or young person and these decisions are to be conveyed both orally and, where practicable, in writing. This advice is to be given also to the child or young person where he or she is capable of comprehending the decision unless it is plainly not in his or her own interest to be so informed. When notifying the child or young person, it should be in a manner and in a language that the child understands.

Both the court and counsel are obligated by the statute to explain the nature of the proceedings in a manner and in a language that can be understood by the child or young person. It is also the duty of both court and counsel to encourage and assist the child or young person to participate in the proceedings.

How well those duties have been observed is at present a matter for conjecture. Hopefully, however, the emergence of research in this field, particularly from the Commissioner for Children's office and the Criminology Unit of the University of Victoria in Wellington in particular, will provide some auditing component for performance standards. In addition, a recent Ministerial Review Committee has graphically exposed a number of practice failings.

Family Group Conferences

The legislation introduced a new diversionary process known as the family group conference. This conference is convened and facilitated by a new statutory official known as the Youth Justice Coordinator. A family group is defined to recognise the different cultural understandings of family. It includes whanau, hapu and iwi for Maori and equivalents in the various Pacific Island cultures. Basically, it means the extended family and the family group conference is a meeting of the culturally defined family group, with officials.

Where a young person is to be charged with an offence, court proceedings cannot be instituted unless:

- the informant believes that the institution of criminal proceedings is required in the public interest; and
- consultation has taken place between the informant and a youth justice coordinator; and
- the matter has been considered by a family group conference (section 245).

A young person may be arrested and brought before the court in that case:

- If, after consulting with the barrister or solicitor who represents the young person or with a youth advocate, the young person denies the charge, then the matter proceeds to hearing.
- In every other case a plea is not to be entered but the court is to:
  - direct a youth justice coordinator to convene a family group conference; and
  - Adjourn the proceedings until that conference has been held (section 246).

A family group conference is not required in the following cases:

- The young person has already been convicted and sentenced in the High Court or District Court or Youth Court for any other offence which carries a higher maximum penalty than the contemplated offence and the contemplated offence was committed on a date earlier than the date on which the person was convicted and sentenced.
- The young person is already subject to any full-time custodial sentence or community based sentence or to certain orders already made by a youth court.
- A Youth Justice Coordinator is of the view that the holding of a family group conference would serve no useful purpose and the members of the family or whanau or family group agree (section 248(1)).

The previous paragraph does not apply, however, if the holding of a family group conference is necessary to consider whether the young person should be required to make reparation (section 248(2)).

If a family group conference is convened in relation to any offence and before a decision or recommendation or plan has been made the child or young person is said to have committed another offence, then the same family group conference may consider that offence and it is not necessary to convene a separate family group conference (section 248(3)).

Sections 249-257 are largely procedural and relate to family group conferences.

The functions of a family group conference are to be found in section 258. The conference is to consider whether the young person should be prosecuted or dealt with in some other way and recommend to the relevant enforcement agency accordingly (section 258 (b)).

If the young person is in custody, the conference makes a recommendation to the court relating to the custody (section 258 (c)), and if proceedings have already been commenced, the conference considers whether the offence should be dealt with by the court or may be dealt with in some other way (section 258 (d)). If a charge is admitted or proved, the conference considers how the young person should be dealt with and makes recommendations to the court (section 258 (e)).

A family group conference is to seek to ascertain if the child or young person admits any offence alleged to have been committed (section 259 (1)). If the child or young person does not admit the offence or the conference cannot ascertain whether the child or young person admits the offence, then the conference is not to make or formulate any decision, recommendation or plan, if such decision, recommendation or plan cannot be formulated without assuming that the child or young person has committed the offence (section 259 (2)).

A family group conference may make such decisions and recommendations and formulate such plans as it considers necessary or desirable in relation to the offender (section 260 (1)). In making decisions and recommendations and formulating plans, the conference is to pay regard to the principles of youth justice referred to in section 208 (section 260 (2)). A family group conference may:

- recommend proceedings be discontinued;
- recommend a formal police caution;
- recommend a declaration that the child is in need of care and protection;
- recommend appropriate penalties;
- recommend reparation (section 260 (3)).

Any decisions, recommendations or plans from the family group conference are to be communicated to the enforcement officer or informant and the youth justice coordinator is to seek agreement of that informant or enforcement officer to the decision, recommendation or plan. Where the conference has been convened by order of the court, the decision, recommendation or plan is to be communicated to the court (section 263 (1)). When meeting with a person to seek agreement, the youth justice coordinator may be accompanied by a person nominated by the family group conference (section 263 (2)). If agreement cannot be reached, the youth justice coordinator may reconvene the conference to see if the conference will reconsider its decision, recommendation or plan (section 263 (3)). Such a

reconvened conference may confirm, rescind or modify previous decisions (section 263 (4)) and that new decision is then deemed to replace the original decision (section 263 (5)).

If agreement cannot be reached, the youth justice coordinator is to adjourn the proceedings and report to the appropriate enforcement agency and (if the conference was convened by the court), report to the court (section 264 (1)).

Limitations on Arrest and Procedural Safeguards During Investigations

For the first time in New Zealand, the law limits the power of police or other enforcement agencies to arrest in preference to proceeding by way of summons. Immediately prior to the Act, in excess of 60 per cent of young persons facing charges in the Children and Young Persons' Courts in New Zealand had been arrested. There is some evidence in the literature that suggests that the method of proceeding against an alleged juvenile offender affects later disposals. New procedural law has been introduced to govern enforcement authorities' actions in questioning children and young persons they suspect of offences and to establish the rights of the young people to consult with others. No statement made by a child or young person will be admissible as evidence, unless made in the presence of a trusted or neutral adult who is not a member of the enforcement authority.

There has been an anticipated reaction by some enforcement agencies to what they regard as a law aimed at frustrating criminal investigations and which generally mistrusts police. The legislature, I understand, was persuaded by objective evidence, however, that current procedural guidelines contained in judges' and police rules were not always adhered to. These rules now have the force of law.

Provisions Relating to Iwi Authorities and Cultural Authorities

The Act provides for alternatives to custody, guardianship and placement by the Director-General of Social Welfare where another arrangement would be more suited to the cultural background and preferences of children and young people and their families. Section 396 empowers the Director-General to approve incorporated bodies established by an iwi or by a cultural authority, as iwi or cultural authorities. Before doing so, the Director-General must be satisfied that the body is able to meet appropriate standards of care in acting as the custodian or guardian of children and is capable of exercising the powers and functions conferred by the Act.

These provisions were made in response to very strong representations from Maori and Pacific Island groups, that the previous legislation disempowered their people, undermined the integrity and the authority of whanau, hapu and iwi and left whanau powerless and dependent. It was recognised that a large majority of children and young persons in Social Welfare institutions and foster homes were of Maori or mixed race descent. The provisions in this part of the legislation were aimed to arrest the process of alienation of Maori children from their whanau and to prevent the alienation of Pacific Island children from their family groups to the extent

that this has occurred with Maori children. Important goals of the Act are the protection of and partnership with and participation by all cultural groups.

To date this has been a pious aspiration. To my knowledge at least, no such authorities have been authorised in the youth justice field in New Zealand.

Orders of Court and Factors to be taken into Consideration

Powers and orders of the court

The court may discharge an information (section 282 (1)). The orders which the court has jurisdiction to make are in section 283. They are as follows:

a) Discharge without further order or penalty.

b) Admonish.

c) Order to come before the court if called on within twelve months.

d) Fine.

e) Order young person or if under sixteen, parent or guardian, to pay amount towards costs of prosecution.

f) Order reparation for emotional harm or loss or damage and if person is under sixteen, order parent or guardian to make that reparation.

g) Order restitution with similar provisions for parent or guardian if young person is under sixteen.

h) Order forfeiture of property where forfeiture would have been obligatory or could have been ordered under any other Act if the young person were an adult.

i) Order disqualification from driving under section 83 of the Criminal Justice Act 1985 if the young person could have been so disqualified if an adult.

j) Order confiscation of motor vehicles if that could have been made if the young person were an adult.

k) Place the young person under supervision of Director-General or specified person for up to six months.

l) Make a community work order (see section 298).

m) Make a supervision with activity order (see section 307).

n) Make a supervision with residence order (see section 311).

o) If the young person is over fifteen, convict and send on to the District Court.

Section 284 provides the factors to be taken into account on sentencing. They are as follows:

a) Nature and circumstances of offence and involvement in offence.

b) Personal history, social circumstances, personal characteristics.

c) Attitude of young person to the offence.

d) Response of young person's family, whanau or family group to the offending and to the young person him or herself.

e) Measures taken or proposed by family, whanau or family group to make reparation or apologise.

f) Effect of offence on victim and need for reparation.

g) Previous offences.

h) Decision, recommendation or plan of a family group conference.

Orders for supervision, community work, supervision with activity, supervision with residence, or sending the young person to the District Court are not to be made merely because the court considers the young person is in need of care and protection (section 284 (2)).

Restrictions on power of court to make certain orders

There are restrictions on certain orders imposed by section 285. They are as follows:

1 An order to come before the court so that the court may take further action may not be combined with a supervision order or a supervision with activity order or a supervision with residence order. Apparently it may be combined with any other order (section 285 (2)).

2 A fine may not be imposed unless the court is satisfied that the young person has the capacity to pay the fine in twelve months (section 285 (2)).

3 Reparation and restitution orders are not to be made against the Director-General or against an appointed guardian (section 285 (3)).

4 If a young person is ordered to be brought before the District Court, the court may not at the same time make any other order except admonishment (section 285 (4)).

5 A community work order, a supervision with activity order or a supervision with residence order may not be concurrent with or cumulative on any other similar order, any community based sentence under the Criminal Justice Act or a full-time custodial sentence unless that other order or sentence will expire not later than fourteen days after making the orders under section 283 (section 285(5)).

6 If the court would have made a community work order or a supervision with activity order or a supervision with residence order, but cannot do so because of the provisions in paragraph (5) above, and the court considers it would not be appropriate to make any of the other orders, then despite the restrictions on such a course of action set out in section 290 (post), the court may order the young person to go before the District Court for sentence (section 285 (6)).

7 A supervision with residence order or an order sending the young person to the District Court may not be made unless -

a) The offence is purely indictable; or

b) If the young person were an adult, a full-time custodial sentence would have been imposed; or

c) The special circumstances of the offence or the offender indicate a non-custodial order would be inadequate (section 290 (1)). Nevertheless such an order is not to be made unless the court has considered all other alternatives available and is satisfied none is appropriate (section 290 (2)).

When making a supervision with residence order or an order that a young person be brought before the District Court, the Judge must record in writing his or her reasons for making that order (section 290 (3)). The powers of the District Court, however, are not limited by the restrictions in section 290 (1) and (2) (section 290 (4)). Other restrictions are that a person or organisation is not to be required to supervise a young person without consent (section 286); reparation is to be limited to direct loss (section 287); and an order is not to be made in respect of a parent or guardian unless the parent or guardian has been given the opportunity to be heard. A supervision with activity order is not to be made unless the circumstances are that if that order were not available the court would have considered making a supervision with residence order (section 289).

Recall before court

If the court orders the young person to come before the court if called on, the court may at any time during the duration of the order direct the young person to be recalled on the application of a social worker or member of the police (section 295 (1)).

If a young person is recalled, the court may exercise any of its sentencing powers with certain restrictions, namely

a) If at the time the original order was made, the court also fined, made an order for payment towards costs, or made an order for reparation or restitution or forfeiture of property, that power may not be exercised a second time.

b) The court may make a further order for recall in which case if the young person appears, then the court is not to make any further order for recall.

Perceived Benefits of the Diversion Process

- The family group conference procedure devised a diversionary mechanism that was not by-passed by arrest, not susceptible to net-widening and which eliminated the quasi-judicial panel approach.

- Providing for victim involvement and input has the potential to address the rights of that otherwise largely neglected group. For the victim to confront an offender and personalise the damage, whether physical, economic or emotional, wrought by crime can itself be a salutary experience. As well, the conference procedure can add a larger dimension to offending than the legally aided, artificial, adversarial arena of the current legal system. Certainly it exceeds the primary function of courts to determine whether the offender has breached a criminal statute.

- Importantly, the procedure recognises, implicitly at least, the reality of the limited effectiveness of courts and enforcement authorities and enlists the aid and commitment of families as well as gaining access to the community at large.

- An intangible benefit is the opportunity to heal the breach of social harmony, of social relationships, of putting right to wrong, of reparation, rather than concentrating on punishment.

- In New Zealand at least we have the potential for cultural input into a distinctly mono-cultural legal system.

- The presence and participation of enforcement officers in formulating creative resolutions provides a powerful vehicle for improving their public relations image.

- The expeditious resolution of denied matters as a result of greatly reducing the numbers appearing in court has many fiscal advantages. Recent research produces startling statistics. On a survey of 700 young persons involved with police and transport authorities, nearly 500 were warned by the police, who sometimes arranged an informal

sanction with their families. The remaining 200 (approximately) went to family group conferences and seventy of those ultimately went to the Youth Court. Of those conferences, 95 per cent reached agreement. Of family group cases, 94 per cent resulted in apologies and/or some other form of agreed penalty.

In 1990 only 5 per cent of young persons received court orders and only 2 per cent went to a Department of Social Welfare home or prison. Before this Act there were 10,000 to 13,000 cases each year. In 1990 there were 2,587 cases. In 1985 there were 4,397 young persons in youth institutions. Six years later there were 939. The cost of running institutions in 1985 was $206m. In 1991 the cost was $113m. In almost any other field, this may have been a critical advantage. However, on the basis that "governments can always find money for prisons or wars" this argument has not been as persuasive as might have been envisaged.

8. Greater sums of reparation have been recovered, although the present economic climate has made this difficult. Sometimes the reparation is in the form of unpaid labour.

Conclusion

Much offending by young people starts at a relatively petty level. The danger of resorting to court action in such cases is the risk of exposing the young person to associations and practices which may prove unhelpful, and can result in an increase in offending behaviour. Most young persons grow out of offending behaviour as they mature, but some go on to become serious offenders. All offending behaviour needs to be challenged, and will be challenged under this legislation. But the full resources of the Youth Court should be reserved for the more serious cases. They should be targeted to those young people who need formally to be brought to account, in the public interest.

A further strand in thinking behind the new Act is that decisions about the best way of dealing with a young person's delinquency ought to start with his or her family group. The family should be central participants in any body set up to make decisions and recommendations affecting the young person's future. An important point here is that among Maori and Pacific Island groups, those family members who may be regarded as having a concern and responsibility for a young person, are more extensive than traditionally conceived by police and social service agencies.

There are a range of penalties available to the Youth Court and an infinite variety of sanctions which families themselves can impose. We have moved towards the justice model, because it has as a major goal to lead young people to accept responsibility for their behaviour and to be accountable for it.

FAMILY DECISION-MAKING IN YOUTH JUSTICE: THE NEW ZEALAND MODEL

Gabrielle M. Maxwell

IN THE PAST, THERE HAS BEEN A NUMBER OF DIFFERENT APPROACHES TO dealing with young offenders. Two main models which contended for legislative implementation internationally in the 1950s and 1960s were the "crime control" model and the "welfare" approach. The "crime control" approach advocates a tough response to offenders, particularly the use of custodial penalties for severe and persistent offenders. The "welfare" approach emphasises "causes" and, hence, the need to "treat" basic social and personal problems, often by removing the children and young people from "bad" environments to institutions. In practice therefore, the two approaches were often very similar: both led to young people being placed in institutions, either for "their own good" or for punishment. Until recently, the result was that large numbers of children were placed in institutions in New Zealand either because of parental neglect or because of their problem behaviour. Problem behaviour included a wide range: from criminal offences, to status offences such as absconding from care or to merely "not being under proper control". In other words, difficulties in parental management were often attributed to the child, who was effectively punished by institutionalisation for an indeterminate period—perhaps the rest of their childhood. Recently, it has become apparent in New Zealand, as elsewhere, that the institutionalisation of large numbers of children and young people is damaging to them, ineffective in preventing delinquency, and quite unjust. Thus the new approach follows international trends in emphasising:

- **Justice**

  Under this model there is an emphasis on accountability for offences. The severity of the punishment is related to the crime and due process is seen as important. The main method of achieving

accountability in the current New Zealand system is through a family group conference (FGC) which, if it agrees, has the power to decide, or, in court cases, recommend to the court on appropriate penalties. The new Youth Court's role is limited, except when there is a lack of agreement at the FGC or when the charges are denied or in the most serious cases. At the same time there is an emphasis on due process and the protection of rights to ensure that injustices do not occur. The legislation sets out in detail the procedures to be followed by police in stopping, questioning and arresting young people. This includes informing them fully of their rights in a language and manner that the young person can understand. Young people are also entitled to consult with a barrister or solicitor and a parent or other adult before questioning and to have the barrister or solicitor and a parent or other adult present during questioning. Evidence from answers to questions when a parent or other adult is not present is not normally admissible. A youth advocate is appointed by the court whenever a young person appears before it and legal advice may be available in other cases. Another related feature has been recognised as important if young people are to be accountable. That is, that time frames should be realistic so that the young offender can associate the punishment with the offence, repay his or her debt quickly, leave the past behind and then proceed with his or her life.

- **Diversion, decarceration and destigmatisation**

Related to the notion of a justice model is an emphasis on frugality of penalties, avoiding processes that label and stigmatise, and avoiding the use of institutions unless they are required for public protection. Such trends have been reinforced by research that has shown that the involvement of young people in the criminal justice system and in institutions has resulted in labelling and stigmatisation and, through association with other offenders, the acquisition of "criminal" membership and skills. In the New Zealand system there is increased use of police "diversion" through warnings and the use of informal sanctions. The FGC is also a new method of diversion. At the same time, the scale of penalties available to the Youth Court has been modified: now the most severe options available are "supervision with activity" in the local community for a maximum of two months to be followed by six months supervision, "supervision with residence" to be followed by six months supervision or transfer to the District or High Court (where a custodial option is seen as potentially necessary).

- **Victim involvement, mediation, reparation and reconciliation**

World-wide there has been a trend to increasing involvement of victims in criminal justice processes by better provision for their needs through the opportunity to obtain reparation and, through mediation, to allow for their involvement in outcomes and the

opportunity for reconciliation. The potential benefit of mediation for offenders is that it enables them to understand the consequences of their offences and to express remorse (compare John Braithwaite's (1988) concept of "reintegrative shaming"). In New Zealand, traditional Maori practice involved the victims, the offender and the families of the victim and the offender, firstly, in acknowledging guilt and expressing remorse and secondly, in finding ways to restore the social balance so that the victim could be compensated by the group and the offender could be reintegrated into the group. Pressures to allow Maori to return to their own system of justice and the increasing attention to victims in New Zealand has led to victim involvement becoming an integral part of the new system for dealing with young offenders. Unlike practice in other jurisdictions, the involvement of victims has not been limited to merely minor offences and first offenders. All offences committed by juveniles, excepting only murder and manslaughter, now have an FGC which the victim is entitled to attend and which occurs before the court proceeds to deal with the case. At the same time, New Zealand has affirmed some aspects of the "welfare" model by including goals of enhancing well-being and strengthening families, while rejecting the notion that the recognition of "welfare" needs should stand in place of accountability or lead to removal from the family and the community as so often occurred in the past. Elements of a crime control approach are still to be seen in the provisions for transfer of serious offences to a higher jurisdiction for a custodial sentence. In addition, the Children Young Persons and their Families Act 1989 contains two important new elements:

- **Family participation**

  His approach emphasises that families and young people should participate in all parts of the decision-making process and be party to agreed outcomes. This is to be achieved partly through the FGC but also through the nature of the Youth Court, where families and young people are entitled to make submissions and to be party to decisions. The origins for this lie both in the notions of empowerment and control through participation that have been emerging in the psychological research on treatment effectiveness, and also in the traditional Maori hui (meeting) in which decisions are taken collectively by all those involved including, depending on the seriousness of matters, extended family (whanau), clan (hapu) and tribe (iwi).

- **Cultural appropriateness**

  Procedures and services are to be appropriate to the culture of the families and young people including FGCs, the Youth Court and arrangements that are made for accountability and enhancing well-being. The political determination to redress the history of Pakeha

(people of European origin) domination of a country which was founded in a bi-cultural treaty has come about both in response to Maori demands and in response to increasing recognition of the injustice and damage to Maori during the last 150 years of New Zealand history.

Objectives of the Children, Young Persons and Their Families Act 1989

An unusual feature of the new approach is that the legislation sets out the goals of the system as a set of general objectives and principles in respect to children and young people and as a set of specific principles in relation to youth justice. The important features embedded in these objectives and principles are set out below. In addition, there are other principles relating to the importance of the protection of children and young people and of keeping them with their families and in their communities wherever possible.

The Goals of Youth Justice in New Zealand

- Achieving justice
  - Accountability: emphasising the importance of young people paying an appropriate penalty for their crime and making good the wrong they have done to others
  - Reducing time frames: making time frames realistic given the age of the child or young person
  - Due process: emphasising the protection of young people's rights
  - Diversion: keeping young people out of courts and preventing the use of labels that make it difficult for young people to put early offending behind them
- Responding to needs
  - Enhancing well-being and strengthening families: making available services that will assist the young person and their family
- Providing for participation
  - Family involvement: involving families and young people in making the decisions for themselves and taking charge of their lives
  - Victim involvement: involving victims in the decisions about outcomes
  - Consensus decision making: arriving at decisions which are agreed to by the family, the young person, police and victims
- Being culturally appropriate
  - Culturally appropriate process: allowing families to choose their own procedures and the time and place of meetings

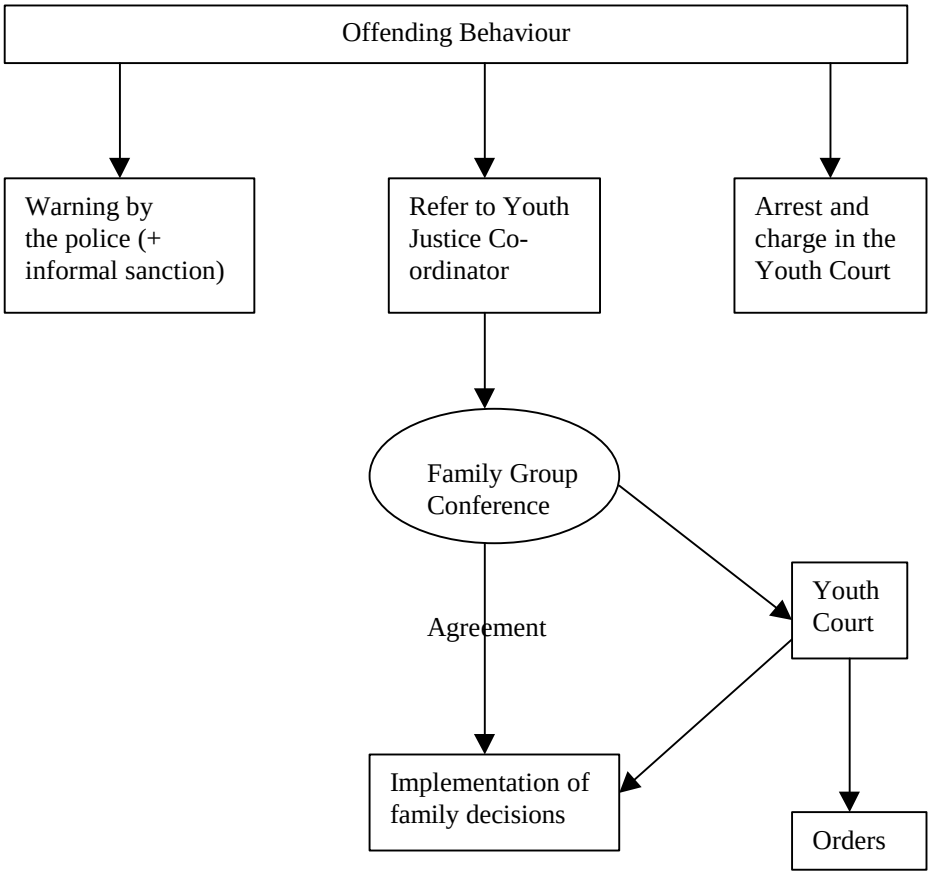
- Culturally appropriate ways of providing services: developing and funding a range of services to suit different cultural needs and wishes, operated by people sensitive to that culture
- Culturally appropriate penalties: encouraging the creation of penalties which reflect different cultural responses.

The family group conference

At the heart of the New Zealand system lies the family group conference. Figure 1 accurately depicts it as the central decision making forum for the more serious cases in the youth justice system, including those that appear in the Youth Court.

Figure 1

Youth Justice: Pathways through the System



It is also a principal mechanism for diversion from the courts. It is the way in which young people, families and victims can participate in the decisions. And it is the way in which each culture can, potentially, adapt the justice process to fit its own spirit, philosophy and procedures—for Maori, to their own kaupapa. The FGC is a meeting at a time and place chosen by the family and attended by the young person, the family (including the wider family), the victim, the police, the youth advocate (young person's lawyer) and any other people whom the family wishes to have present. It is arranged by a Youth Justice Coordinator (YJC) who acts as facilitator and mediator between family and the police, although the YJC can invite others to act as facilitator (especially if this is culturally important). Usually, after the introductions and greetings, the police describe the offence and the young person admits or denies involvement. If there is no denial, the conference proceeds with the victim describing the impact on him or her of the offence. Views are then shared about how matters can be set to rights. The family deliberates privately before the meeting reconvenes with the professionals and the victim to see if all are agreed on the recommendations and plans advanced by the family.

Evaluating the system

From 1990 to 1992 Allison Morris and I have been involved as principal researchers in a project evaluating the translation of the objectives and principles of the Act into practice in five areas of New Zealand. The sample included almost 700 young people who came to the attention of the police. FGCs were arranged for over 200 and seventy appeared in the Youth Court. The research followed the experiences of these young people. It included interviewing police, attending FGCs, interviewing YJCs, youth advocates, families, young people and victims. The research covered all those who came to notice in a three-month period in five different districts. Maori and Pakeha and one Pacific Island interviewer were involved. As much as was possible, each interviewed families and young people of a similar ethnic group. This paper presents an overview of the results (reported more fully by Maxwell & Morris 1992; 1993) that relate to the success of the Act in meeting its principal objectives. It refers first to those objectives which are dominant trends in current juvenile justice policy in most jurisdictions: enhancing the well-being of juveniles who offend, holding juvenile offenders accountable for their offences, protecting juveniles' rights, and diversion. Then it turns to the innovatory features in the New Zealand system: participation by young persons and their families, victims' involvement, consensus decision-making and cultural appropriateness. Finally, it comments on the way in which potentially contradictory and conflicting objectives have been resolved in practice.

Accountability

Most juveniles referred to FGCs or to the Youth Court agreed to perform tasks which were intended to make them accountable for their actions.

"Active penalties" (that is, community work, financial penalties, reparation and the like) were agreed to by 83 per cent of those involved in non-court referred FGCs and by 89 per cent of those involved in court referred FGCs. If "apologies" are also added, the figures become 95 per cent and 94 per cent respectively. Nominal dispositions were rare, as were solely welfare-oriented outcomes. More importantly, the vast majority of FGC plans were completed either fully—58 per cent, or in part—29 per cent. However, on occasions, FGCs were observed in which young persons were not made accountable for their actions. Particularly with respect to those under fourteen, and possibly with respect to some girls, minor offenders and first offenders, the question could be raised as to whether or not the FGC referral might have been motivated by a desire to intervene where the perceived problem was one of a "welfare" or "parenting" nature. FGCs were not always held within the statutory three-week time frames for non-court cases and two weeks for court cases. However, most were held within a week afterwards. On the other hand, there were such long delays in the Youth Court before many cases were finalised that any accountability must have had a fairly remote connection with the original act.

Due process

The research recorded evidence of breaches of statutory safeguards by front line police officers and their continuing resistance to these safeguards. Some youth advocates failed adequately to advise their clients (or even to attend court-ordered FGCs). Pressures, both explicit and implicit, are placed on young people to admit their guilt (Wundersitz et al. 1991) and the costs of denying the offence seemed considerable, both in terms of long delays and the resulting anxiety. Broadly speaking, practice as yet fails to meet expectations in this area.

Diversion

There is no doubt that diversion from both courts and institutions were primary aims of the new Act. Both forms of diversion have been achieved. In 1986, sixty-seven per 1,000 young people appeared before the court. Now the figure is sixteen per 1,000. Figures for residential custody are now half of previous figures and penal custody figures are down by 70 per cent. Furthermore, the use of remands in institutions and institutional placements of young people for other reasons has been dramatically reduced. In 1981 there were 4,500 institutional places for children and young people. By 1986, this was reduced to about 3,000, and in 1992, the number is seventy-six. The research data confirm these general trends. Only 10 per cent of young offenders were arrested and this compares with at least a third and possibly even 45 per cent before the Act. Warnings, with or without informal sanctions by the police, now account for 62 per cent. The remaining 28 per cent were referred directly for an FGC. Of the 10 per cent of the sample who appeared in the Youth Court, only about half of these were subject to any type of court order and less than a fifth of these were subject to any kind of residential or custodial order. This means that, overall, only 5 per cent of the juveniles in

the sample were subject to court orders and less than 2 per cent were subject to residential or custodial orders. On the other hand, if FGC outcomes are regarded as diversionary (in the sense that they avoid a court appearance), it is clear that they were not limited by tariff considerations and often seemed moderately severe to the researchers. Nominal dispositions, for example, were rarely made in contrast to the position prior to the Act (in 1988, more than a third of the dispositions made by the judges in the Children and Young Persons Court could be described in this way). Of course, the dispositions resulting from FGCs are "agreed" to by the families and young persons involved. Whether or not this agreement was "real", "coerced" or "constructed" by the professionals is open to debate. Analysis of the observational data reveals examples of each.

Enhancing well-being and strengthening families

The starting point in the new New Zealand system is to separate out youth justice and care and protection issues: separate coordinators, separate procedures and separate courts. Young persons' needs and behaviour are not so easily separable, however, and an emphasis on one can mean the neglect of the other. It is perhaps self-evident, therefore, that if outcomes stress accountability they can only enhance the young person's development in an indirect sense (by accepting responsibility for his or her actions). The legislation precludes referral into the youth justice system on welfare grounds yet seems to expect or encourage discussion within the FGC of welfare issues at the same time that it expects or encourages resolutions to be determined by accountability. Thus, contradictory expectations exist side by side. The research showed that welfare issues were, not surprisingly, a secondary consideration: cases were recorded in which the needs of families and young persons were ignored at FGCs and where no "welfare" type follow-up was provided. The legislation also encouraged the strengthening and support of families. If what was envisaged was the provision of resources to families in need by social services and the like, this did not occur. We observed situations in which families were clearly asking for but not receiving help. We also observed, however, situations in which families were strengthened and supported by the involvement of their whanau or extended family; and on occasion services were provided within iwi (tribes). This happened in the main without sufficient state funding. Overall, the provision of adequate and accessible services to the young people and families was poor.

Participation by young people and their families

One of the major failings of the new system must be its failure to engage young people in the decision-making process. Only about a third felt involved in the FGC process and less than a fifth (16 per cent) felt that they had been a party to the decision at the FGC. The level of perceived involvement in the court process was even lower. In this respect the objectives of the Act are not being met. There are a number of possible reasons for this continued lack of involvement by young persons. It may be that both families and professionals do not allow them to become involved; or

it may be that the young persons themselves do not feel able to become involved. Many jurisdictions have tried a range of different ways to increase the involvement of young people in the decision-making process and they have been no more successful than attempts in New Zealand. Indeed, arguably, even these very low figures for young persons' involvement in the New Zealand system reflect some progress. It may be that many young people have very little to say, at least in the presence of adults who are unknown to them, and that, therefore, they cannot be expected to participate more actively, whatever the forum. Many families do not encourage, or even actively discourage, the participation of young people in decisions about their own future. The problem may, thus, lie not in the system's response to young persons, but in the expectations of the wider society. The involvement of parents in FGCs, on the other hand, was considerable. In contrast to young persons, more than two-thirds of the parents said that they felt involved in the decision-making process and about two-thirds also felt they had been a party to the decision. These results contrast dramatically with the failure effectively to involve parents in "panels" or "boards" in other jurisdictions. Thus, holding parents responsible for their children's offending has been given a new and constructive (in both senses) meaning.

Victims' involvement

Victims simply by their presence participate more in this system than traditionally. However, only around a half of the FGCs in the sample had victims or victims' representatives present. Also, an unexpectedly high proportion of victims (around a quarter) said that they felt worse as a result of attending the FGC and an unexpectedly low number of victims (about a half overall) said that they were satisfied with the outcomes. In part, these results may be due to the inadequate preparation of victims (and other participants) about what to expect at the FGC and unrealistic expectations about likely or "appropriate" outcomes, especially with respect to reparation. Arguably, this could be remedied through better briefing. But such views also raise a more fundamental issue: the extent to which victims' interests can be addressed in a forum set up primarily to divert young people from the court. Victims' pressure groups have long been suspicious of programs which they feel "use" victims for the benefit of the offender. There must be some basis for this with respect to the current organisation of FGCs. Such a criticism could be met by clarifying the objectives of FGCs and by meeting specific victims' needs in a different way—for example, through improved procedures for compensation and through the provision of adequate support both within FGCs and more generally.

Consensus decision-making

Agreed outcomes should satisfy participants more than enforced outcomes and most FGC outcomes are "agreed" outcomes: 95 per cent in the sample and 94 per cent nationally (Maxwell & Robertson 1991). Thus, in these terms, participants at FGCs should be highly satisfied. And indeed the results showed high figures for satisfaction in most cases: 91 per cent of the police, 86

per cent of the YJCs, 85 per cent of the parents and 84 per cent of the young people. Victim satisfaction, in contrast, was only 48 per cent and yet those victims who were present were supposedly parties to an "agreed" outcome. In some sense, then, it appears that victim agreement is being "coerced". Second, it is difficult to know whether families and young persons "truly" agreed or felt "truly" satisfied. The qualitative data from the research would suggest that, on many occasions they did, but that on other occasions they were and felt coerced to agree to decisions in essence made by the professionals.

Cultural appropriateness

New Zealand has attempted to create a youth justice system which is culturally appropriate. There is a range of ways in which the success of this objective might be determined: participation by whanau (whanau participated in well over a half of cases involving Maori), the venue of FGCs (marae were rarely used) and participants' depictions of the process as culturally appropriate (views varied on this). A key issue here is the extent to which Western systems of criminal justice can accommodate elements of an indigenous approach. To be effectively responsive to indigenous needs there probably has to be a different process, a different type of spirit and underlying philosophy and, potentially, different outcomes from those traditionally available in criminal justice contexts. In each of these respects, the practice showed both limitations and successes.

The FGC is an attempt to give a prominent place to a different and culturally appropriate process, but that process often failed to respond to the spirit of Maori or to enable outcomes to be reached which were in accordance with Maori philosophies and values. At times, FGCs can and do transcend tokenism and embody a Maori kaupapa. But not often. Also, money for iwi services and iwi authorities has not yet been allocated in sufficient amounts for a truly cultural approach to be taken. The Youth Court in particular found it difficult to accommodate Maori process and etiquette. We observed a number of situations where whanau wanted to be involved in the resolution of cases affecting their kin and yet providing time for receiving their submissions and, more importantly, giving real weight to them, seemed problematic to the court. And there has been only a limited tolerance of the notion that the outcome should stress the restoration of social imbalance by the reintegration of the offender into the social group. This collectively redresses the issue of reparation to the offender.

In short, our view and that of the Maori and Pacific Island participants, is that the process (and hence spirit and outcomes) remained Pakeha and unresponsive to cultural differences. However, it is also our view, and that of many of the Maori and Pacific Island participants, that there is at least the potential for FGCs to be more able to cope with cultural diversity than other types of tribunals. This is best summed up in the words of the Maori researchers involved in the project:

> We feel that the Act for the most part is an excellent piece of legislation which promises exciting possibilities for the future. When the processes outlined in the Act were observed, Maori families were indeed

> empowered and able to take an active part in decisions concerning their young people. It is not difficult to see the beneficial influences that the Act may eventually exert on wider Maori, Polynesian and Pakeha society. Maori society could gain immensely from legislation that acknowledges and strengthens the hapu and tribal structures and their place in decisions regarding the well-being of young people and [from legislation] that provides them with an opportunity to contribute to any reparation and to support those offended against. The same scenario would apply to Pacific Island peoples. Pakeha society would also benefit from a process which acknowledges the family and gives redress to victims.

Resolving conflicting and contradictory objectives

There are four main areas of considerable potential conflict in the New Zealand system:

- reconciling offenders' needs and victims' interests;
- reconciling accountability and "welfare" goals;
- providing for family and victim participation in decisions while maintaining tariff equity;
- empowering families and young people within a system whose primary goal is control.

The primary arena for meeting offenders' needs is the FGC; this demonstrates both welfare and diversion goals. It is also the primary arena for protecting victims' interests; this reflects the goal of mediation and possibly crime control. Research suggests that when reparation and diversion are sought within the one forum, then the victim almost invariably loses out. For example, Marshall and Merry (1990) argue that whatever aims are subscribed to in practice, in reality diversion becomes the over-riding objective and all other goals become subordinate to it. Thus, the offenders' interests are promoted and the victims' neglected. This has occurred in the New Zealand system of youth justice too. Tension has been created by expecting diverse interests to be met in a single forum without one or the other being compromised. Practical steps could be taken which might at least alleviate the imbalance in favour of offenders to some extent but the fundamental difficulty may not be able to be eradicated. We believe that it will inevitably be impossible to meet victims' needs in a forum designed for offender accountability, and that the only solution is to develop services that respond to victims outside the criminal justice system.

Much the same point can be made with respect to attempting to make offenders accountable while enhancing their well-being. The way in which this conflict is resolved in the New Zealand youth justice system is to stress accountability at the expense of welfare. By far the majority of FGC and court outcomes reflect responses to the young person's offence(s) rather than his or her needs. To the extent that this is what the legislature intended to be the primary focus of FGCs, it can thus be concluded that the system is working well. However, it is not clear from the Act that such a view is justified: there

is no explicit or implicit ordering of objectives, and often the needs of young people and families were not met because of the lack of services.

There is also a real anomaly in a system where access to services is achieved through offending. The conflict could best be resolved by ensuring open access to services for both families and young people depending on their need for such services. This should be separate from any considerations of whether or not there has been offending. In other words, service provision should become even more separate from youth justice.

A third tension is between justice in the form of equality and proportionality of penalties, and a participatory decision-making system. Inevitably, families differ in the types of solutions they see as most appropriate and, to an even greater extent, so do victims. The consequence is inevitably variability in decision-making. To some extent the youth justice team can and, in the research, did provide guidance on an appropriate penalty. But when families and victims had their own ideas, as they often did, youth justice coordinators and police tended to stand back, as indeed they must if the process is to be truly participatory and empowering and the outcomes are to be satisfactory to the principal actors.

Similarly, there is an inevitable conflict between a system which, in essence, is a system of state control and the notion of family empowerment. It is possible to argue that to pretend that families are in control is a mockery and a sham; the reality is that all the decisions are inevitably controlled and managed through the agency of the professionals, who set the rules of the game and who are themselves principal actors. Alternatively, one could argue that, to the extent that it is possible to return power and control over decisions to those who will be most affected by them, the consequences will be less harmful and that justice, in its more abstract sense, is most likely to be served.

What much of this discussion highlights is that at times the various purposes of the FGC are incompatible. This inevitably impacts on practice. One option would be to establish priorities among the principles and objectives. It is this option we see as appropriate in relation to meeting the needs of victims, enhancing the well-being of young people and strengthening families through providing services. Alternatively, the balance among the various tensions can be left to find a resolution in each specific case, as indeed the court arrives at an individualised resolution of a variety of potentially conflicting factors when deciding upon a sentence. It is this latter option we see as appropriate in relation to the tensions between equity of tariffs and participation and between family empowerment and control.

Conclusion

There is much that is positive and novel about the New Zealand system of youth justice. It has succeeded in diverting the majority of young offenders from criminal courts and reliance on the use of institutions has been dramatically reduced. Families participate in the processes of decision-making and are taking responsibility for their young people in most instances. Extended families are also becoming involved in the continuing

care of their kin and as an alternative to foster care and institutions. Greater acknowledgment is being given to the customs of different cultural groups and the adoption in some instances of alternative methods of resolution through the use of traditional processes. It has been suggested that the system is not transferable to other jurisdictions because it is derived from Maori practice and particularly suited to Maori needs, yet the research shows that it is equally satisfactory for Pakeha. Nor do we share the view that this is only so because New Zealanders have come to share aspects of Maori culture; rather it can be suggested that the features that make for success are universal.

The new system has not, however, avoided all the difficulties which inevitably arise when attempting to reconcile conflicting objectives; it was unrealistic to expect that it would. Furthermore, implicit in these comments on meeting the principles and objectives in the Children, Young Persons and Their Families Act 1989 is an awareness of the power of all old, entrenched and dominant systems to resist fundamental re-shaping by the young, new and emerging system. Resistances by those who actually have to implement new legislation at grass roots level are not unusual. In many respects, practice is uneven and idiosyncratic. And there are three areas of considerable concern to us: professionals taking over and thereby both distorting and destroying the FGC process; families being susceptible to this by being denied necessary information on both the process and the possibilities; and the lack of resources and support services which can undermine family decisions (for a fuller discussion, see Maxwell & Morris 1992). However, it is early days. The approach is new and potentially radical. We must wait and see.

References

Braithwaite, J. 1988, *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge.

Marshall, T. & Merry, S. 1990, *Crime and Accountability: Victim/Offender Mediation in Practice*, HMSO, London.

Maxwell, G. & Morris, A. 1992, *Family Participation, Cultural Diversity and Victim Involvement in Youth Justice: A New Zealand Experiment*, Department of Social Welfare and the Institute of Criminology, Victoria University of Wellington, Wellington.

---------- 1993, *Kids in Trouble*, Daphne Brasell Associate, Wellington.

Maxwell, G. & Robertson, J. 1991, "Statistics on the First Year of the Children, Young Persons and their Families Act 1989", in *An Appraisal of the First Year of the Children, Young Persons and Their Families Act 1989*, ed. G. Maxwell, Office of the Commissioner of Children, Wellington.

Wundersitz, J., Naffine, N. & Gale, F. 1991, "The Production of Guilt in the Juvenile Justice System: the Pressures to 'Plead' ", *The Howard Journal*, vol. 30, no. 3.

ACKNOWLEDGMENTS

This paper is based on material written jointly by Allison Morris and Gabrielle Maxwell. Much of the last half of the paper has been published previously in *The Australian and New Zealand Journal of Criminology*, vol. 26, no. 1, March 1993.

We wish to acknowledge the help and support of the Department of Social Welfare who funded the research, Dr Warren Young (the project director), Maire Leadbeater, Gary MacFarlane-Nathan, Jennifer Bradshaw, Roy Couch, Talosaga Manu, Willis Katene, Jeremy Robertson, Rowena Morgan and Nicky Walsh (the researchers), all those members of the police, courts, DSW and the judiciary who collaborated with us, and finally all those young people, families and victims who shared their experiences with us.

ISSUES IN JUVENILE JUSTICE IN QUEENSLAND: NEW LAWS, OLD VISIONS

Ian O'Connor

ON 4 AUGUST 1992, THE QUEENSLAND PARLIAMENT PASSED THE *Juvenile Justice Act 1992* and the *Children's Court Act 1992*. The legislation, which it is anticipated will be proclaimed in early 1993, repeals the juvenile justice provisions of the *Children's Services Act 1965*. It provides the legislative framework for the administration of juvenile justice in Queensland, and thus the ethos of this legislation will inform practice and policy in Queensland into the twenty-first century. The intention of this paper is first, to critically consider the adequacy and vision of the legislation, second to question the extent to which it appropriately responds to the causes and consequences of juvenile crime, and third, examine the potential it offers for increased confidence in the juvenile justice system by young people and the community. Because the principles of legislation are similar to those embodied in law in other jurisdictions the issues raised have relevance beyond Queensland.

The Juvenile Justice Act

The Juvenile Justice Act was long promised in Queensland. In introducing the legislation to Parliament, the Minister for Family Services and Aboriginal and Islander Affairs (The Hon. Anne Warner) stated that the Children's Services Act was "outdated and inadequate":

> The Provisions of that Act reflect the ethos prevalent during the mid-sixties that children should be dealt with primarily on the basis of their welfare needs. Less emphasis is placed on the nature and extent of offences which have been committed.
>
> This is out of step with current thinking that children should be held accountable for their actions.

Juvenile justice practice in Queensland has not reflected "welfare model" principles for at least a decade (O'Connor 1992). Regardless of this, the Queensland Government followed the path well trodden by other States and overseas jurisdictions and introduced a "justice model".

The legislation provides the framework for responding to juveniles, who have offended, or are alleged to have offended against the criminal law. It thus should be analysed in terms of:

- the understanding of crime implicit in the legislation;
- the responses to criminal misbehaviour explicit in the legislation;
- the extent to which it encourages the respect for the rights of young people suspected of offending behaviour;
- the extent to which it encourages a respect and a response to victims; and
- the extent to which it responds to the over-representation of Aboriginal and Torres Strait Islander children.

The legislation is explicitly based on "justice model" principles. That is, the legislation is based on the assumption that the child is primarily responsible for his or her behaviour, and in consequence the task of the court is to adjudicate guilt or innocence, and having established guilt, the court's response should be proportionate to the child's deeds and culpability (Naffine, Wundersitz & Gale 1990). The justice model is underpinned by a neoclassical model of crime causation which posits that appropriate and certain punishment has both individual and general deterrent effects (Murray 1985; Schneider 1990).

The Juvenile Justice Act establishes as a principle of juvenile justice that:

> a child who commits an offence should be
>
> (a) held accountable and encouraged to accept responsibility for the offending behaviour; and
>
> (b) punished in a way that will give the child the opportunity to develop in a responsible, beneficial and socially acceptable way.

and the sentencing principles (Section 109(1)) require amongst other matters:

> a fitting proportion between sentence and offence.

The legislation provides statutory backing for the Queensland Police Service's cautioning program, and therefore envisages a substantial number of children will continue to be diverted from the court.[1] Cautioning is, however, perceived in terms of its deterrent effects. The Minister stated:

---

[1] The Queensland Police caution the majority of juvenile offenders. However, most are cautioned for minor offences—*see* O'Connor 1992.

> This [cautioning] is usually a sufficient deterrent to further offending.

The language of punishment and deterrence was, and is, a recurring motif in the Government's and Department's discussion of the legislation. For example, in a document prepared by the Department of Family Services and Aboriginal and Islander Affairs (DFSAIA) to explain the legislation to students and other interested persons, the second paragraph states:

> These Acts will ensure that young people will receive fair and fitting penalties for breaking the law. Juvenile crime is a serious problem and its victims are entitled to expect that offenders will be punished (Juvenile Justice Branch, DFSAIA 1992).

The sentencing options in the legislation reflect this philosophy.

The view that children are individually responsible for their behaviour, and may be deterred from offending by appropriate punishment is questionable. Recent research indicates that non-offending and desistance from offending is best accounted for by the normative and ethical orientation of the individual, rather than the perception of the certainty, celerity or severity of punishment (Schneider 1990, p. 76) (*See also* Braithwaite 1989).

Similarly, the structural factors associated with juvenile crime have also been noted elsewhere. Indeed, contemporaneously with the introduction of the Juvenile Justice Act the Minister for Family Services also announced a crime prevention initiative for "high risk" communities:

> The nature of the programs explicitly recognises the links between social and economic disadvantage and crime.

The programs are targeted on "children aged between ten and sixteen years of age who have not yet begun to break the law". Somewhat bizarrely, there is potential for a social problem orientation to primary crime prevention, while secondary and tertiary crime prevention responses are anchored within deterrence and risk control strategies. I will return to the consequences of the contradictions between the differing approaches to juvenile crime at the conclusion of the paper.

Pre Court

Leaving to one side the criticisms of the justice model, it is appropriate to examine the legislation in its own terms; that is the extent to which it gives effect to underpinning assumptions of the justice model. The justice model emerged as a response to the documented failure and injustices of the welfare model (for example, Australian Law Reform Commission 1981). The criticisms focused on the child's lack of due process rights, the potential intervention for non-criminal matters, the failure of the rehabilitative ideal, and the excess of discretionary power exercised by child welfare bureaucracies. Many reformers were concerned about the harm suffered by children at the hands of bureaucracies acting in children's "best interest". The benefits claimed for the justice model are that children are accorded the same

legal safeguards and due process rights accorded to adults, intervention is restricted to criminal matters, and sentencing is proportionate to the child's deeds, rather than needs. Coercive intervention on welfare grounds is theoretically restricted (Morris & Giller 1987). Put simply, the model proposes that children should not only be subject to the law but benefit from the protection of the law.

The Juvenile Justice Act and Children's Court Act provide many mechanisms to hold children accountable. There are many processes by which children may be dealt with, but few mechanisms by which others may be held accountable for their actions towards children.

Children's vulnerability during the investigation of criminal offences has been well documented (*see* Alder et al. 1992 for most recent research and summary of the literature). The Juvenile Justice Act holds as a matter of general principle:

> 4(a) because a child tends to be vulnerable in dealing with persons in authority a child should be given the special protection allowed by this Act, during an investigation, or proceeding in relation to an offence committed, or allegedly committed by a child.

Yet the special protections provided in this Act in relation to the investigation of an offence are few and far between. There is no requirement in the Act that children are to be informed of their legal rights, nor is there a clear statement of those rights in the legislation. There is no right to a telephone call, no right of legal advice prior to or during questioning, no real restriction on the right of arrest (though police may initiate proceedings in other ways), no restrictions on fingerprinting, photographing children and so on. While there is a rebuttable requirement that a child should be questioned in the presence of an independent adult, there is no statement of the purpose of the attendance of an adult at an interview, no clear statement as to when the adult should be present from, no requirement of the police to inform the independent adult of his or her role in the interview and to inform this person of the child's rights. There is no right of access to legal advice, let alone any positive obligation on the state to guarantee the availability of legal assistance.

The Importance of Rights

The rights and responsibilities of young people are discoverable in a myriad of legislation and case law which applies to citizens of all ages and in the Juvenile Justice Act and case law applying only to young people (*see* Seymour 1988; Alder et al. 1992). For young people, the police are the human face of the criminal justice system and the protection and recognition of their rights in their encounters with police is essential to their fair treatment in the criminal justice system. To exercise their rights in interactions with police, young people need knowledge of their rights and acknowledgment and respect of those rights by police. Similarly, police need a clear statement of the rights of young people in the criminal justice system. Yet there is no clear statement of children's rights in interactions with police in Queensland.

The difficulty and complexity of discovering and exercising rights is illustrated by one of the most common situations encountered by young people—being stopped by the police and being requested to provide, at a minimum, name and address. In Queensland, at common law, while a police officer is perfectly entitled to ask a citizen for his or her name and address, the citizen also is perfectly entitled not to supply it. However, there are provisions in at least twenty statutes which enable the police to demand a person's name and address (Criminal Justice Commission 1991). These statutes range from the *Local Government (Queensland Street Mall) Amendment Act 1983* (s.35) to the *Drugs Misuse Amendment Act 1987* (s.22).

The lack of clarity of the rights of young people is further exemplified by the situation of young people who have been apprehended or who "voluntarily assist police with their inquiries"; that is, the rules related to the investigation of offences and the interrogation of suspected offenders. The courts have recognised that children may be vulnerable in such situations and may not, for example, be able to assert the common law right to silence during police interrogation. Thus in all Australian jurisdictions children must be questioned in the presence of their parent or of an independent person (*see* Warner 1992). However, even in relation to this "right", the scope and intent is unclear. The stage prior to the formal questioning at which the independent person should or may be present remains in doubt in the Juvenile Justice Act. There is no clear statement of the role (and the requisite knowledge needed to fulfil the role) of the independent person. The Juvenile Justice Act simply requires the presence of an independent person (as outlined in Section 36(2)) when a "statement is made or given to the police" (s.36(1)). Section 36(3) allows admissions, in certain circumstances, of statements not made in presence of an independent adult. The assumption that a parent will adequately safeguard the rights of the child in an interrogation is questionable (Human Rights and Equal Opportunity Commission 1989). Parents are as potentially likely as the child to be ignorant of their own or their child's legal rights and ignorant of the role of the independent person in a police interrogation. Parents may also feel intimidated. Alternatively they may see their role as assisting the police to clear the matter up (*see* Warner 1992 for discussion of the lack of clarity of rights in other jurisdictions).

The only controls on police practice in this context are the retrospective exclusion of evidence by courts and/or complaints to police complaints authorities. The efficacy of court review depends, at a minimum, on the matter being brought to the court's attention through the young person challenging voluntariness of the confession. Without a formal statement of rights (and given the existing inadequate standard and availability of legal services) children have nothing by which to judge the appropriateness or legality of their experiences with police, except their own experiences and those of other young people (MacMillan 1992; O'Connor & Sweetapple 1988, pp. 16-29; *see also* Human Rights and Equal Opportunity Commission 1989, Chapter 21).

It is not that the legislation does not allow children to be dealt with informally, for proceedings to be initiated by way of attendance notices rather than arrested, and so on. The problem with the legislation is that it fails to

limit the discretion of the police, or formally require them to inform the child of his or her rights and so on. Thus it ignores the substantial documentation of current problems in the investigatory phase (*see* Alder et al. 1992; Faine 1988; Federation of Community Legal Centres 1991; O'Connor & Sweetapple 1988; Human Rights & Equal Opportunity Commission 1989, Chapter 21; Youth Justice Coalition 1990).

The Act provides a statutory base for cautioning, with the added potential for an apology to the victim associated with the caution. Other than taking no action, it restricts non-court options to cautioning. While the intentions to restrict intervention may be laudable, it ensures a limited repertoire of responses and hence restricts the development of innovative responses such as those outlined by Professor John Braithwaite, Judge Michael Brown and Senior Sergeant Terry O'Connell in this volume.

Court and Sentencing

The Juvenile Justice Act provides a code for dealing with children charged with offences. The Children's Court Act provides for a Judge as president of the Jurisdiction. The Children's Court judge will hear serious matters, and exercise a review function in relation to sentence and bail.

The Act provides for the expected due process of rights of the child in relation to pleas of not guilty. The Children's Services Act, though nominally based on a welfare model, similarly granted full due process rights to the child (*see* O'Connor 1992; *see also* Seymour 1988 on the overstatement of the impact of welfare model in Children's Court in Australia). The Children's Services Act provided more stringent safeguards in that it required the finding of a prima facie case in all matters involving indictable offences, prior to any plea. The Juvenile Justice Act does not provide an absolute right of legal representation: representation depends on the means of the child and the availability of legal aid services.

The major claim made for the legislation is that it embodies a "new" approach to sentencing and new and expanded sentencing options. As the Minister stated on the introduction of the Bill:

> [The Bill] . . . will provide a new statutory framework for dealing with children who commit offences. It is designed to make young offenders more accountable for their actions, by providing courts with a wider range of sentencing options.

Though the justice model theoretically places the trial at the centre of the court process, wherein any injustices may be remedied, the reality is that trials are a rarity; the real business of Children's Courts and other summary courts is that of sentencing offenders (*see* Naffine, Wundersitz & Gale 1990, p. 204). The sentencing principles and sentencing options are therefore central to the Act, and of course, of central symbolic importance.

The sentencing principles are set out in Section 109 of the Act and in the "general principles in Section 4 of the Act". On the positive side, these principles call attention to age as a mitigating factor and that detention is an option of last resort. On the negative side is the dominant vision of the Act,

that the appropriate response to juvenile crime is punishment. Age, immaturity, employment and so on are merely factors which serve to mitigate the penalty.

The central organising theme of punishment is expressed through the sentencing options in the legislation for it is the sentencing options that enable the courts to give effect to the sentencing principles. The sentencing options provided, constitute an escalating hierarchy of punishments. The options are detailed below. (Also noted alongside the options available under the Children's Services Act as a major claim for this legislation is that it provided an extensive new range of sentences.)

Table 1

***Juvenile Justice Act 1992* (Qld) Section 120 and the *Children's Court Act 1965* Section 62(1) (Qld)¾ Sentencing Options**

JUVENILE JUSTICE ACT S. 120	CHILDREN'S SERVICES ACT S.62(1)
• reprimand	• admonish and discharge
• good behaviour bond (up to 1 year)	• convict and fine
• fine	• supervision order up to 2 years
• probation order—6 months (if before judge up to 1 year)	• community service orders (passed 1989, but never proclaimed)
• community services orders 13-14 years—20-60 hours 15-16 years—20-120 hours	• care and control order—recommendation for release by Magistrate
• detention order—immediate release	• Care and control up to 2 years—recommendation custody from Magistrate
• detention order—6 months ->or if Judge—2 years	• Queen's pleasure—for offences punishable by life imprisonment
• or if Judge and serious offence—half of maximum adult term or max. 7 years	
• or life offence—10 years -> heinous violent offence—14 years	
(Both Acts allow for restitution to be ordered against the child, or in certain circumstances the parent.)	

There are many similarities in the options under both Acts. The major difference is that the Department is to receive resources to develop its community based corrections program. This is long overdue. Unfortunately, in promoting the notion that the new legislation creates many new options, the government has created a public expectation of a tougher regime for young offenders. DFSAIA's own information sheets are stating "that

offenders will be punished". The Premier was reported in the *Courier Mail* (14 November 1991) as expecting that the new Act would result in more young people in detention, but for shorter periods! It is very difficult to satisfy the punishment lobby, but the legislation creates an expectation for such satisfaction. It fails to articulate an alternative vision, or a framework for non-punitive inclusionary responses to crime which directly address the experience of victims (Braithwaite 1989).

The Act seeks to establish a series of punishments in the community. It enables children who break the conditions of their community based order to be breached, and potentially resentenced for the original offence. It is noteworthy that the Act, though providing a general obligation on the Chief Executive to provide programs (Section 202), ensures that entry to community based orders is dependent on a representative of the Department reporting that the child is "suitable" for the program and the program is available (Section 146). While the Act was supposed to reduce the discretion of the Department, the content of the programs (that is, the punishment) is to be specified by the Department. This, in part, explains the gap between the rhetoric of expanded sentencing options and the limited options provided in the Act.

The Act embraces the bifurcatory tendencies of much current criminal justice practice. Most offenders may be punished within the community. The small hard core of offenders whose behaviour is either so uncontrolled or so unamenable to community corrections, are institutionalised:

Bifurcated policies redescribe, and then redistribute deviant populations. Some categories of offenders are represented as more serious and menacing, while others who had previously been regarded as a threat, are represented as relatively unproblematic (Pitts 1990, p. 4).

Any examination of this process should consider the manner in which this process of sorting occurs. The deserts based sentencing, inherent in the justice model, blinds itself to the processes by which particular events are classified as crimes, and crimes of serious concern, and particular groups and categories of people are processed by the criminal justice system. If the definition of "serious crime" were restricted to serious crimes of personal violence, then young people would rarely feature as a serious crime problem. But the property crimes committed by young people are constructed as a serious crime problem, demanding a response. The seriousness of the problem is never diminished by analyses of youth crime which debunk some of the myths of the nature and extent of youth crime (O'Connor 1992; Mukherjee 1991).

Juveniles primarily appear before courts charged with property offences and some young offenders repeatedly appear. In relation to young offenders, it is the repeat offenders who are consensually defined as problematic. In terms of the Juvenile Justice Act it is these young people for "whom no other sentence is appropriate" other than detention.

In focusing on the offence in sentencing the justice model blinds itself to the discretion exercised by police on where to focus their attention, on who to charge and with what. It ignores factors of over-policing, police youth conflict and racism (*see* Royal Commission into Aboriginal Deaths in Custody 1991).

> What deserts-based sentencing means, then, is building on class based definitions of serious crime, ignoring class differential vulnerability to the acquisition of a "bad" record, and imposing an arbitrary, blind "fairness" at an advanced stage of the criminal justice system. Ignoring the "non-legal" factors in sentencing means ignoring the fact that in all its stages, criminal justice is a complex process of negotiation . . . Freezing a particular moment, freezing a discussion of what is relevant, is to freeze all the injustices, all the deprivations all the power struggles, that have gone before into that arid concept of "legal variables". By modestly demurring that social justices cannot be dealt with by the criminal justice system, justice model reformers are building those very injustices into the heart of the system . . . (Hudson 1987, p. 114).

Under the existing legislation similar bifurcatory processes have operated. Queensland has had relatively low rates of incarceration of juveniles—a positive side effect of years of neglect of the juvenile justice system (*see* O'Connor 1992). Yet Aboriginal and Torres Strait Islander young people have faired poorly in the existing sentencing practices of the court.

Aboriginal and Torres Strait Islander children are dramatically over-represented at the most coercive end of the juvenile justice system. At 30 May 1992, 42.4 per cent of all juveniles in care and control were Aboriginal and Torres Strait Islander children. (Aboriginal and Torres Strait Islander children constitute less than 4 per cent of children aged ten to sixteen in Queensland.) Twenty-one and a half per cent of children under a supervision order were Aboriginal or Torres Strait Islander. The disproportionate concentration of Aboriginal and Torres Strait Islander children under the most coercive orders is evident from the fact that as of 31 May, 1992, 59.2 per cent of all Aboriginal and Torres Strait Islander children on corrective orders were under care and control and 41.8 per cent on supervision, for non-Aboriginal and Torres Strait Islander children the pattern was reversed, 35.1 per cent under care and control and 64.9 per cent under supervision.

The most recent indicators of the extent of detention of Aboriginal and Torres Strait Islander children in Queensland is similarly concerning: 42.6 per cent of discharges from detention centres were of Aboriginal and Torres Strait Islander children. The extent of over-representation appeared to increase inversely to age: Aboriginal and Torres Strait Islander children constituted 68.8 per cent of discharges of children 10-12 years; 55.6 per cent 13-14 years; 41.7 per cent 15-16 years; and 28.2 per cent 17 years and older (*see* Table 3) (*See also* O'Connor 1990).

Table 2

Percentage of Children under Corrective Order as at 30 June 1992, Queensland

	Number	*Per cent*
Care and control		
ATSI	218	42.4%
Non-ATSI	296	57.6%
Supervision		
ATSI	150	21.5%
Non-ATSI	547	78.5%
Care and control as % of all corrective orders		
ATSI	368	59.2%
Non-ATSI	843	35.1%

Source: Department of Family Services and Aboriginal and Islander Affairs

Table 3

ATSI Children as a percentage of all Children released from Detention, 11 months to 31 May 1992, Queensland

Age	*Total children discharged*	*Per cent ATSI*
10-12	16	68.8%
13-14	126	55.6%
15-16	501	41.7%

Source: Department of Family Services and Aboriginal and Islander Affairs

The over-representation of Aboriginal and Torres Strait Islander children in the Queensland system must remain an issue of major concern (as elsewhere, *see* Gale, Wundersitz & Bailey-Harris 1990).

The Royal Commission into Aboriginal Deaths in Custody found a diversity of reasons for Aboriginal juvenile offending, but concluded that an understanding of the experience of disadvantage in Aboriginal society is critical to understanding the reasons for offending. The Commission reported that the nature of the criminal justice system and the manner in which criminality is constructed is a factor:

> The exercising of the ideal of impartial justice is necessarily accompanied by the values of those who enforce the "rule of law" (1991 vol. 2, p. 275).

Cases investigated by the Commission illustrate that:

> young Aboriginals are unnecessarily or deliberately made the subject of trivial charges or multiple charges, with the result that the appearance of a serious criminal record is built up at an early age (1991 vol. 2, p. 275).

Racial discrimination generally and the poor relations between police and Aboriginal young people, and the reliance of Aboriginal youth on public space for recreation and so on, increases the likelihood of Aboriginal youth having adverse contact with the police (*see* Cunneen 1990; White 1990; Youth Justice Coalition 1990).

The involvement of Aboriginal and Torres Strait Islander youth in the juvenile justice system at such an early age provides the foundation for long-term involvement in the adult criminal justice system, as well as causing much social disruption in their communities of residence. Problems of social order, of the relationship between the juveniles and their community and the broader society are increasingly the province of the criminal justice system. In relation to the children this is both expensive and socially destructive. The criminalisation of juvenile misbehaviour results in the imposition of external controls and solutions, rather than supporting the development of local and internal solutions. The imposition of external solutions in fact destroys traditional modes of social control, and in consequence gives rise to many of the problems that result in children coming into contact with the child welfare and juvenile justice systems.

There is little in the Juvenile Justice Act to indicate that the extent of disadvantage experienced within the juvenile justice system will not be exacerbated by the model underpinning the legislation. The Act does provide for cautioning by Aboriginal elders, and suggests that the court may take into account cultural (amongst a whole range of other) factors in sentencing. However these are limited initiatives which do not fundamentally impact on the logic or approach of the Act.

The legislation is flawed in terms of its vision and in terms of its implementation of the model. The opportunities to restructure juvenile justice law, policy and practice are rare. Unfortunately in this case, the legislators and those who advised them opted for a dated vision. It neither takes account of the more recent theoretical innovations in juvenile crime causation (for example, Braithwaite 1989) or alternative legislative models such as is offered by New Zealand and European countries. Nor does it satisfy criteria from within its own frame of reference that the rights of the young person should be adequately safeguarded. The actualities of practice, and the documented breaches of children rights, have been swept aside in the belief, that if we get legal formula right, justice will follow.

Contradictory Visions

Contemporaneously with the enactment of the Juvenile Justice Act and Children's Court Act, the government announced a "Juvenile Crime Prevention Initiative". The Minister stated that the initiative was a part of the government social justice strategy. It was:

> a "whole of government response", involving departments with major responsibilities for young people—such as education, police, health. These programs will co-ordinate their efforts at a local level, and in partnership with community organisations, provide services and programs for young people which directly address the causes of crime in these areas. My Department will provide funding for community organisations in areas with high rates of juvenile offending. The funded programs will target children aged ten to sixteen years who have not yet begun to break the law. The nature of the programs explicitly recognises the links between social and economic disadvantage and crime.

The programs recognise the structural causes of crime, and the importance of developing locally based responses which address such causes. The crime prevention initiative draws upon the experience of other "whole of government" social problem oriented crime prevention strategies (for example, Bonnemaison, *see* King 1987). The success of such programs has depended on the extent to which the orientation is shared and reflected by all actors in the juvenile justice system—the police, the courts, the community corrections agencies. That is, the extent to which all players perceive the importance of responding to the structural underpinning of crime.

Unfortunately, the social problems orientation to crime prevention is limited to primary prevention, and explicitly limited to non-offending children. It is not embedded in the Juvenile Justice Act. The legislation commits neither the police nor departmental officers to act in a manner which accounts for the structural causes of crime. It is most likely that the legislation will be publicly seen as the major response to juvenile crime. The legislation does not educate the public, rather it creates an expectation for tough treatment of juveniles—an expectation it will find hard to satisfy. (It is worth noting that the legislation was passed three weeks before an election in which law and order was a major issue, with little dissent by the opposition parties.) It is a major concern that the crime prevention initiatives may be submerged by the dominant orientation of the legislation. The ethos of the Act will permeate the community correction programs. The logic of the Act means that within community corrections, the primary concern will be risk management and order compliance, rather than the issues of disadvantaged, experienced by the young offender. Minimal resources are currently provided for the welfare and support needs of young offenders. There is nothing to suggest this will change.

In the budget presented to parliament prior to the election, the government announced a significant injection of resources to finance the crime prevention initiative and the Juvenile Justice Act. This commenced the process of redressing the neglect of juvenile justice issues over the past ten to twelve years. In this period of neglect, the skills base of the DFSAIA and indeed the community sector in the area of working with young offenders has been eroded. It is of considerable importance that this skills deficit is addressed in a manner, which does not lead to a simplistic and rigid implementation of the Juvenile Justice Act across the state. Workers will require education, not just about the Act, but about the nature and extent of juvenile crime and appropriate responses to juvenile crime. The legislation

will be implemented in the context of a minimal, non-statutory social resources, for disadvantaged young people. The Act must not be an excuse for the non-provision of welfare services to youth who have offended.

References

Australian Law Reform Commission 1981, *Child Welfare*, Report No. 18, AGPS, Canberra.

Alder, C., O'Connor, I., Warner, K. & White, R. 1992, *Perceptions of the treatment of juveniles in the legal system*, National Clearinghouse for Youth Studies, Tasmania.

Braithwaite, J. 1989, *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge.

Brown, M.A. 1990, Response to Juvenile Offending in New Zealand, Paper presented to the 9th Commonwealth Law Conference, April 1990.

Criminal Justice Commission 1991, *Police Powers in Queensland*, Criminal Justice Commission, Brisbane.

Cunneen, C. 1990, *A study of Aboriginal Juveniles and Police Violence*, Faculty of Law, University of Sydney, Sydney.

Faine, J. 1988, "Just a phone call: Privilege or right" in *Police in our society*, eds I. Freckelton & H. Selby, Butterworths, Sydney.

Federation of Community Legal Centres (Vic) 1991, *Report into the Mistreatment of Young People by Police*, June.

Gale, F., Wundersitz, J. & Bailey-Harris, R. 1990, *Aboriginal Youth and the Criminal Justice System*, Cambridge University Press, Melbourne.

Hudson, B. 1987, *Justice through Punishment*, MacMillan, London.

Human Rights and Equal Opportunity Commission 1989, *Our Homeless Children*, AGPS, Canberra.

Juvenile Justice Branch, Department of Family Services and Aboriginal and Islander Affairs 1992, *New legislation to deal with juvenile offenders: Background Paper*, DFSAIA, Queensland.

King, M. 1987, *How to make Social Crime Prevention work—the French Experience*, NACRO, London.

MacMillan, A. 1992, "A National Approach to Juvenile Justice", paper presented to the Australian Institute of Criminology National Conference on Juvenile Justice, Adelaide, September.

Morris, A.D. & Giller, H. 1987, *Understanding Juvenile Justice*, Croom Helm, London.

Mukherjee, S. 1991, Confronting crime: An evaluation of Australia's crime problems and a consideration of crime control strategies. Paper presented to the second Melbourne Criminal Justice symposium, University of Melbourne, 16 March.

Murray, G. 1991, Mediation and Reparation within the Criminal Justice System, Community Justice Program, Brisbane.

Murray, J.M. 1985, "The development of contemporary justice and correctional policy" in *Juvenile Delinquency in Australia*, eds A. Borrowski & J.M. Murray, Methuen, Sydney.

Naffine, N., Wundersitz., J. & Gale, F. 1990, "Back to Justice for Juveniles: The Rhetoric of Law Reform", *Australia and New Zealand Journal of Criminology*, vol. 23, pp. 192-205.

O'Connor, I. & Sweetapple, P. 1988, *Children in Justice*, Longman Cheshire, Melbourne.

O'Connor, I. 1990, The Impact of Queensland's Family and Child Welfare Law and Juvenile Justice Legislation, Policy and Practice on Aboriginal and Torres Strait Islander Families and Children, Royal Commission into Aboriginal Deaths in Custody, Brisbane.

----------, *Youth, Crime and Justice in Queensland*, Criminal Justice Commission, Brisbane.

Pitts, J. 1990, *Working with young offenders*, MacMillan, London.

Royal Commission into Aboriginal Deaths in Custody 1991, *National Report* (Commissioner Elliott Johnston), AGPS, Canberra.

Schneider, A.L. 1990, *Deterrence and Juvenile Crime: results from a national police experiment*, Springer Verlag, New York.

Seymour, J. 1988, *Dealing with Young Offenders*, Law Book Company, Sydney.

Warner, K. 1992, "Legislative and policy overview" in *Perceptions of the treatment of juveniles in the legal system*, eds C. Alder, I. O'Connor, K. Warner & R. White, National Clearinghouse for Youth Studies, Tasmania.

White, R. 1990, *No Space of their Own: Young people and social control in Australia*, Cambridge University Press, Melbourne.

Youth Justice Coalition 1990, *Kids in Justice: a Blueprint for the 90s*, Youth Justice Coalition, Sydney.

SENTENCING REVIEWS FOR JUVENILE OFFENDERS: THE NEED FOR A JUDICIAL MECHANISM

Margaret Allison and Stephen Armitage

ALTHOUGH THERE HAS BEEN MUCH EMPHASIS IN THE PAST DECADE toward the greater diversion of young people away from the court system there has also been a concern to improve the process for young people who are formally prosecuted. Numerous issues such as better access of young people to quality legal representation, more opportunities for young people and their families to participate in and understand the court process and more appropriate sentencing options will be familiar to those with even peripheral involvement in the juvenile justice area. An issue that has been less debated is the process of reviewing the merit and operation of sentences imposed upon young people found guilty of offences.

Queensland has recently completed a comprehensive review of its response to young people in conflict with the law. The issue of appropriate mechanisms to review the sentences of young people was examined in this process. This paper will discuss the present situation in Queensland with respect to the review of sentences, identify the considerations that had to be taken into account and outline the approach soon to be implemented in Queensland.

Background

In Queensland persons aged between 10 and less than 17 years are regarded as young people with respect to criminal law. On average, over two-thirds of young people apprehended for offences are diverted from formal prosecution by the long established and successful police cautioning scheme. The rest are brought before Children's Courts constituted throughout the State by stipendiary magistrates and, in some remote areas, justices of the peace. In 1989-90 there were 4,371 appearances of young people in Children's Courts.

To put this in perspective, these appearances represented just over 2 per cent (2.05%) of the total workload of Children's Courts and adult Magistrate's Courts appearances for offences combined.

Table 1

Children's Court Appearances as a percentage of Children's Court & Magistrate's Courts Workload for Offences, Queensland, 1987-88 to 1989-90

	Appearances Children's Court	*Appearances Magistrates Court*	*Total*	*Percentage*
1987-88	4,448	180,304	184,752	2.40%
1988-89	4,364	197,643	202,007	2.16%
1989-90	4,371	213,302	217,673	2.05%

The sentencing options available to Children's Courts are found under the present *Children's Services Act 1965*. In summary, a court may:

- "admonish and discharge" without further penalty;
- order a young person to be supervised by the Department of Family Services and Aboriginal and Islander Affairs for a period of up to two years;
- order a young person to pay a fine;
- order a young person to pay restitution or compensation; or
- order a young person into the "care and control" of the Director-General, Department of Family Services and Aboriginal and Islander Affairs for a period of up to two years.

Young people have the same rights as adults to appeal against a finding of guilt. They also have the same rights, and access to the same mechanisms as do adults, to appeal against the merit of a sentence. Where the case relates to a simple offence, a young person can appeal to a District Court Judge. If a sentence or conviction for an indictable offence is disputed a young person can appeal to Queensland's highest court, the Court of Appeal. However, it is rare for young people to use these avenues of redress. Only a handful of cases have been dealt with by appellate courts since the commencement of the Act in the mid 1960s. There are at least three reasons for this.

Firstly, young people tend to be reluctant to appeal against non-custodial sentences. For example, a young person placed under a supervision order for a minor first offence would typically resist appealing even though he or she has a good case for arguing that an admonishment and discharge would be more appropriate. The commitment of time involved in appealing, including applying for and obtaining legal representation, instructing counsel and further court appearances is perceived by many as more onerous than the sentence itself.

Secondly, appeal against a court's "custodial" sentence is of limited utility since the real decision about a young person's liberty is made by administrators. Unlike most other Australian States and Territories a court in Queensland does not yet have the power to sentence a young person to a period of detention except in relation to very serious offences such as when a child is found guilty of an offence for which an adult is liable to life imprisonment. A court can order such a child to be "detained at Her Majesty's pleasure" for an indeterminate period (Section 63, *Children's Services Act 1965*). This order is to be repealed by the Juvenile Justice Act 1992.

The decision to detain a young person is made by a delegated officer of the Department of Family Services and Aboriginal and Islander Affairs. This administrative power derives from guardianship that is conferred upon the Director-General when a young person is placed on a care and control order. On the same basis the Department makes the decision about a date of release from detention limited only by the length of the order itself. For example, in the context of a twelve-month care and control order the Department may decide that the child be released from detention after four months and that the balance of the order be served in the community under supervised conditions.

Thirdly, the time frame for the hearing of appeals concerning indictable offences is so long that most young offenders in custody would have effectively completed their sentence before the hearing. For example, the typical period of detention for young offenders admitted to detention for the first time is about eight weeks while it takes some three to four months to get a hearing before the Court of Appeal. A significant consequence of this is a lack of a substantial body of case law providing guidance in sentencing young people and influencing consistency and equity in sentence outcomes.

Currently, administrators of the Department act in a quasi-judicial manner and frequently modify the effect of some sentence orders on young people to promote consistency. This is particularly the case with respect to whether a young person is detained, and the period of that detention under a care and control order. For example, if a young person is to be detained, soon after the young person's admission to a detention centre senior officers of the Department set a date for discharge. A major consideration in determining this date is detention periods set previously for young people found guilty of similar offences. While this process can ameliorate the effects of the worst disparities in sentencing between young people it has major problems. Included in these are that:

- the process is a "hidden court" that lacks the level of scrutiny and accountability to which a court is subject;
- the process lacks independence—the important decision about a young person's loss of liberty is made by the correctional agency; and
- the process does not assist the sentencing courts to establish consistency.

New Legislation

An early policy position taken in the development of new juvenile justice legislation in Queensland was that the fundamental basis for sentencing young people should be the nature and extent of the offences they have committed not their perceived "welfare" needs. The criminal justice system is a poor mechanism for addressing disadvantage. Given this principle the significant administrative powers conferred upon the Department through such provisions as the care and control order described earlier could not be justified—if a young person is to be deprived of his or her liberty, that decision should be made by a properly constituted court and not by public servants. Thus, in the context of a wider range of new non-custodial sentencing options, it was proposed to give the courts the power to directly detain a young person.

The new detention order was to be determinate and limited by a series of "sentencing caps" depending upon the seriousness of the offence committed and the seniority of the presiding court official. In summary:

- a justice of the peace cannot impose a detention order,
- a magistrate may order a period of detention of up to six months,
- a judge may order detention for a period of up to two years, and
- for serious indictable offences, a judge may order a period of:

  up to seven years detention for an offence for which an adult would be liable to fourteen years imprisonment (for example attempted arson);

  up to ten years detention for an offence for which an adult is liable to life imprisonment;

  up to fourteen years detention for a "life" offence against the person involving an extreme level of violence (for example murder/rape).

A major risk in taking this course of action without adequate mechanisms for reviewing sentences is that unjust outcomes, including disparities in the use of detention and the length of detention to be served, would be without effective challenge. This would be inconsistent with the expressed intention of the new legislation that detention be used only as an option of last resort and for the shortest possible time.

Sentencing Review Options

Essential features of any review mechanism are that it should be:

- expeditious, that is, delays beyond the normal operation of young people's sentence orders, as already noted, would render the mechanism ineffective;

- accessible to young people both in terms of cost and simplicity of procedure; and
- capable of promoting consistency in sentencing.

Three policy options were considered.

Retention of administrative powers to determine release or discharge dates

Under this option the Department would determine the date of release of a young person from custody under the detention order set by the court having regard to the seriousness of the young person's offence and comparative periods of custody served by similar young people. Whilst having the potential to be timely and accessible, this option obviously contradicts the policy of empowering the court to order detention. What is given by one hand is taken away by the other. In relation to non-custodial sentences like probation, it would involve determining a date of early discharge from the order based on similar criteria. Again, this process would undermine the authority and intention of the sentencing court. Finally, this approach could only modify the effect of the sentence order not the order itself nor could it provide guidance to courts sentencing in the future.

Establish a parole board

A parole board could be set up chaired by an experienced legal practitioner, such as a judge. The board would review the detention order and set a release date as it considered appropriate. Though this option would have the benefit of being more independent than the first option, a quasi-judicial body is inappropriate to review the merit of judicial decisions. Further concerns include:

- the cost of setting up a mechanism with such limited functions in a decentralised State like Queensland;
- that the mechanism would have no impact on the appropriateness of non-custodial sentences; and
- that the existence of the board with the function of modifying detention orders would relieve the onus upon a sentencing court of "getting it right in the first place".

Establish a new judicial review process for young people

This option involves the establishment of a new appellate jurisdiction within the Children's Court itself. If the major obstructions to the use by young people of the existing appeals system could be overcome it is recognised that the objective of promoting greater consistency in sentencing could be more readily achieved through a court based review. The new mechanism does not affect a young person's right to appeal through "traditional" avenues of appeal. The difficulty with this option is the cost associated with the

establishment of a judicial office of greater seniority than the magistrates that currently constitute the Children's Court.

There are precedents for this option in South Australia and Western Australia with Children's Court judges in both States having the power to review the sentences of less senior judicial officers of the court. It is also noted that the appointment of such a position with similar powers was advocated by the Victorian Child Welfare Practice and Legislation Review (1984) and the New South Wales Youth Justice Coalition (1990) Report.

The third option has been adopted in Queensland. In August 1992 the Queensland Parliament passed the *Children's Court Act* and the *Juvenile Justice Act*. A new unified Children's Court of Queensland is established under the Children's Court Act and provision is made for a District Court Judge to be appointed concurrently as a Children's Court judge. Where more than one Children's Court judge is appointed, one is to be appointed as President of the court. The office of the judge is empowered under the *Juvenile Justice Act 1992* to review a sentence made by a Children's Court Magistrate upon application by the young person concerned, or by the Director-General of the Department of Family Services and Aboriginal and Islander Affairs acting in the young person's interests. Upon rehearing on the merits of the sentence the judge may:

- confirm the order;
- vary the order; or
- discharge the order and substitute another order.

The Act requires that a review is conducted with as little formality and as expeditiously as possible. It is anticipated that, with the use of facsimile machines and ex-parte hearings, a review will be possible, even with respect to sentences made in remote areas, within days of an application being made. These features make this judicial review mechanism relevant and "user friendly" to young people and, therefore, more effective.

While having the capacity to respond to individual cases this system will also enable the development of an authoritative body sentencing precedents to provide guidance to the courts. This will be particularly important during the first couple of years of operation of the Juvenile Justice Act when sentencing "benchmarks" are being set.

Conclusion

If increased powers are to be granted to courts dealing with young people who have committed offences, effective checks and balances are needed to guard against the inappropriate use of these powers. An administrative review mechanism that performs such a function, similar to the present arrangement in Queensland, is unacceptable and without effective safeguards. Traditional judicial review mechanisms have had limited impact on the sentencing of young offenders, particularly those at the lower end of the system. What is needed is a specialised judicial review mechanism that is responsive to the particular challenges presented by juvenile offenders. Such

a mechanism will soon be implemented in Queensland with the creation of the position of Children's Court judge.

References

Child Welfare Practice and Legislation Review Committee 1984, *Equity and Social justice for Children, Families and Communities—Final Report*, (Chairman, Terry Carney), Melbourne.

Youth Justice Coalition 1990, *Kids in Justice: a blueprint for the 90s*, Youth Justice Coalition (NSW), Sydney.

JUVENILE JUSTICE IN NEW SOUTH WALES: NEW DIRECTIONS

Ian Graham

THIS PAPER WILL PROVIDE THE BACKGROUND TO JUVENILE JUSTICE IN NEW South Wales. The release of various significant reports, the establishment of the Office of Juvenile Justice and the Juvenile Justice Advisory Council and other government committees provide the current perspective within which juvenile justice can be viewed. The suggested Charter of Principles for juvenile justice also adds to this framework and may be of national interest.

Four significant issues have been identified which particularly impact upon juvenile justice in New South Wales. These are crime prevention, early intervention, community alternatives to court processing and Aboriginal issues. The paper highlights the Office of Juvenile Justice, the recipient within the criminal justice system of those young people who have not been successfully diverted from offending through crime prevention or early intervention strategies.

The degree to which juveniles have been sentenced to full time custody has been reduced dramatically over the last six years, whilst the numbers sentenced to community service orders has risen. This has demonstrated an increasing commitment by magistrates to use custody as a penalty of last resort. These positive developments provide the basis upon which to build the future of juvenile justice in New South Wales.

Philosophical Direction

The phrase "Juvenile Justice" may reflect the philosophical approach being taken to juvenile offenders in New South Wales. However, the phrase also raises several questions about the philosophical approach. What is justice? Justice for whom? Is the "system" of justice, just? The answers to these questions are important to an understanding of the philosophical approach to juvenile justice in NSW. There are two features of the system which provide an answer to the questions.

Firstly, alleged juvenile offenders usually appear before a Magistrate in the Children's Court (depending on the offence) and the case results in either

dismissal because guilt is not proven or some form of sentencing option provided for under the *Children (Criminal Proceedings) Act 1987*.

Secondly, Juvenile Justice Officers employed by the Office of Juvenile Justice prepare background and/or assessment reports to assist the court in determining an appropriate sanction. These reports take into account the social background of the young person as well as family history, education, employment, counselling and recreational issues. Accordingly, the "justice" response to the young person is determined in the context of an understanding of the offending behaviour and the circumstances of the young person.

In terms of the debate concerning "welfare" and "justice" models it would seem that the juvenile justice system in NSW includes elements of both models. However, a "justice" model which relies primarily on the court to dispense justice may be limited because neither the victim of the offending behaviour nor the community in which the offending occurred are part of, or integral to, the court process.

One can also question whether the young person receives justice given the research which has shown that the majority of juvenile offenders are themselves victims —of dysfunctional families, of emotional, physical or sexual abuse or of economic deprivation. In this context, one wonders whether the concept of "justice", with its emphasis on a court/legal response to the offending juvenile, is adequate.

There is a need to re-examine our current understanding of "justice" to ensure that it includes all the elements which are integral to a full concept of justice: justice to the offender; justice for the young person; justice to the victim; and justice to the community. A philosophical approach to juvenile justice in NSW needs to include the following:

- respect for and recognition of the rights of the young person;
- acknowledgment of the young person's responsibility and obligation to the community;
- a concept of justice that includes the responsibility and obligation of the community and the government to the young person;
- the accountability of the court for its determinations;
- the involvement of the victim and the community in the justice process; and
- a focus on the offending behaviour, the environment in which the offending occurs and community reintegration.

The Charter of Principles for juvenile justice in NSW referred to later in this paper is consistent with this philosophical approach.

Framework for Juvenile Justice in New South Wales

There have been significant developments in the juvenile justice system in NSW over the past few years. These developments have occurred at structural, policy and operational levels.

Reports on juvenile justice

In 1989 the Youth Justice Coalition (NSW) undertook an independent review of the juvenile justice system in NSW which focused on the experiences and perspectives of the users of the system—primarily juvenile offenders and their families, victims, members of the public and community workers—and drew substantially on the expertise and insights of the personnel of the agencies involved in the juvenile justice system—the police and the courts.

The Youth Justice Coalition's report, *Kids in Justice: a blue print for the 90s*, dealt with the social context of juvenile crime and juvenile justice, the system of juvenile justice, the policing of young people, community based options and detention centres. The Report made a total of 233 recommendations.

In 1991 the NSW Legislative Council Standing Committee on Social Issues commenced an inquiry into the juvenile justice system in NSW with a specific focus on crime prevention programs, court diversion schemes, sentencing and community based options for the care and management of young offenders, selection and training of staff in relevant youth services and the adequacy of services to young people in the juvenile justice system. The Standing Committee's Report, *Juvenile Justice in New South Wales*, made a total of 134 recommendations.

In 1992 the NSW Minister for Justice sought the assistance of the Juvenile Justice Advisory Council of NSW in the preparation of a Government Green Paper on Juvenile Justice. The Advisory Council sought to build on the findings and recommendations of the two previously mentioned reports. The Green Paper commences with a charter of principles for juvenile justice in New South Wales, identifies the main issues concerning crime prevention, community alternatives to court processing, the police, community based programs, health, education, legal services, legislation, courts, coordination, research and evaluation, establishes key objectives in each of these areas and makes over 400 recommendations.

Establishment of the Office of Juvenile Justice

Juvenile Justice was, until recently, a unit within the former Department of Community Services. As such, welfare and justice responses to young people were the responsibility of one agency. In 1991, Juvenile Justice was transferred to the Attorney General's Department and then to the Department of Corrective Services, as the Government sought to establish an appropriate structure for Juvenile Justice in New South Wales. An independent Office of Juvenile Justice was established on 1 November 1991 within the Justice portfolio. The function of the Office of Juvenile Justice is to provide juvenile justice services for the State of New South Wales in the following areas:

- institutions: Juvenile Justice Centres (formerly known as Detention Centres) and Transport Services;
- community: Community Youth Centres and community based programs operated by Juvenile Justice Community Services; and
- policy, research and evaluation: strategic planning, policy development, research, review and quality assurance.

Establishment of Juvenile Justice Advisory Council

The Juvenile Justice Advisory Council of NSW was established by the Minister for Justice and the then Attorney-General on 18 September, 1991 to provide advice to the government on juvenile justice policy for an initial period of two years. It is independent of the Office of Juvenile Justice and has the support of both major parties. The Juvenile Justice Advisory Council comprises community representatives, service providers and experts on juvenile justice and crime prevention issues.

Government committees

A Ministerial Advisory Committee on Juvenile Justice which consists of several Liberal and National Party parliamentarians advises the Minister for Justice on legislative matters concerning juvenile offenders and a Cabinet Sub committee on Justice comprising the Minister for Police, Attorney-General and the Minister for Justice considers justice matters.

Juvenile justice policy direction

The NSW Minister for Justice, the Hon Terry Griffiths, MP has established a clear policy direction for juvenile justice in New South Wales which is highlighted in the theme, "A Second Chance for Kids". This policy direction entails:

- a focus on rehabilitation, diversion and preventive programs;
- addressing, where possible, a juvenile offender's behaviour in the community;
- the use of detention as a last resort; and
- detention in a humane and supportive environment with an emphasis on vocational and education programs.

In addition, a framework has been provided for future policy directions in the form of a Charter of Principles as set out in *Future Directions for Juvenile Justice in NSW* —Green Paper (1993).

The adoption of the Charter of Principles would provide the means for a consistent approach to juvenile justice by all the participants in the criminal justice system and give effect to the new philosophical direction for juvenile justice in NSW which was discussed earlier.

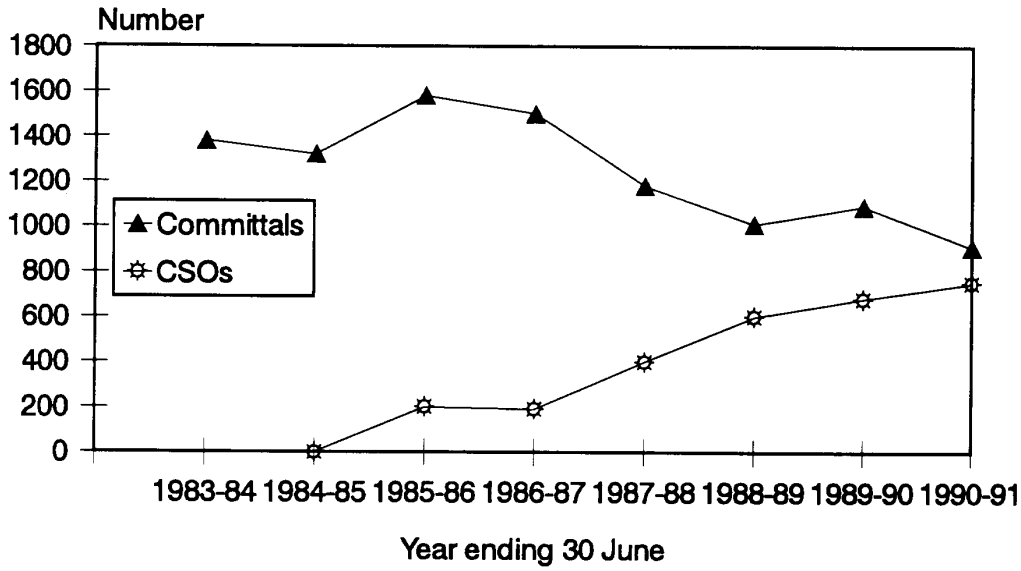
Current Situation

Having considered the broad framework for juvenile justice in NSW, it may be valuable to assess the major trends in recent years with respect to sentencing. This then establishes the base from which it is proposed to progress in the future.

The last ten years have witnessed significant changes in the way that the courts have viewed and used custody for young people. Simply stated, the changes demonstrate an increasing commitment by children's magistrates to use custody as a penalty of last resort.

Figure 1

Children's Court Committals and Community Service Orders, 1983-84 to 1990-91, New South Wales



Two significant sentencing trends provide ample evidence of this commitment. The first is the greatly reduced number of committals ordered by the court (with a corresponding increase in the use of alternatives to custody such as Community Service Orders). Over the past five years the total number of juvenile offenders committed to Juvenile Justice Centres has decreased from 1,558 in 1985-86 to 920 in 1990-91; a decrease of 41 per cent (*see* Figure 1). The second is the lowered rate of incarceration as a proportion of all proven outcomes determined by the Children's Court.

Monthly statistics for the last two and a half years show that the number of young persons detained in juvenile justice centres on control orders has remained reasonably constant. At any time, there are some 300 juveniles serving control orders and around 900 young people are ordered into custody each year. Furthermore, the percentage of Aboriginal young people in Juvenile Justice Centres has decreased from 25 per cent to 21 per cent for the period February, 1987 to February, 1992 (*see* Table 2).

The Aboriginal population of Juvenile Justice Centres as a proportion of the total Juvenile Justice Centre population has remained relatively constant at above 20 per cent over the last five years, though there has been some fluctuation in the actual number of Aboriginal detainees.

This information provides the basis from which to build the future for juvenile justice.

Table 1

Custodial and Non Custodial Outcomes by Remission Scheme, Children's Court March 1984 to June 1991, New South Wales

	Custody	*Non-custody*
Automatic Remission (3/84 to 9/87)	9.8%	91.2%
Earned Remission (10/87 to 9/89)	7.0%	93.0%
Sentencing Act (10/89 to 6/91)	6.3%	93.7%

Table 2

Aboriginal People in Juvenile Justice Centres (As at 7 February each year), New South Wales

Year	1987	1988	1989	1990	1991	1992
Total in Residence	401	375	320	398	404	388
Aboriginal people	100	102	70	85	97	80
% Aboriginal people in Juvenile Justice Centres	25%	27%	22%	21%	24%	21%

Significant Issues to Consider within Juvenile Justice

Crime prevention

The first significant issue for juvenile justice is the development of crime prevention initiatives. In NSW there are a host of programs for young people which have a crime preventive impact. These programs include education, employment, housing, transport, health, sport and recreation and community services. The NSW Police Service has been a leader in regard to specific juvenile crime prevention programs, with initiatives such as:

- the General Duties Youth Officer Program;
- Crime Prevention workshops; and
- Blue Light Discos

The Office of Juvenile Justice is also a key player in the juvenile crime prevention area through its community based correctional programs for juvenile offenders and its Juvenile Justice Centres for those committed to custody.

As part of the new direction for juvenile justice in NSW, emphasis will be placed on developing a coordinated approach across government agencies and facilitating local community based crime prevention projects.

Early intervention in the juvenile justice system

The second significant issue for juvenile justice is the use of early intervention in the juvenile justice system. The police are the first point of contact for young people who become involved in the juvenile justice system. Police interventions may be informal or formal. Informal police interventions consist of the provision of "friendly advice", a "warning on the run" and the use of a caution. All of these interventions occur pre-court. Formal police interventions are on the spot infringement notices, summons, court attendance notices and charging.

A NSW Police survey of formal cautioning for the 1991 calendar year found that the average rate of juvenile cautioning in New South Wales was 28 per cent and that police cautioning rates varied across patrols from 3 per cent to 83 per cent. The report, *Kids in Justice (1990)*, found that:

> While cautioning rates in NSW rose from around 4 per cent in 1985 to over 20 per cent in recent years, this is still well below other jurisdictions. In Victoria, some 60 per cent of young suspects are cautioned; in Queensland, nearly 70 per cent are cautioned. Since NSW and Victoria have similar overall intervention rates, a young suspect is three times more likely to go to court in NSW than in Victoria. This is an alarming disparity. Even in England, where the Thatcher Government has heavily promoted police cautioning, the average rate is more than double that in NSW at around 50 per cent.

Due to concerns about the effectiveness of the form of cautioning used by police which involves a juvenile offender attending a police station with his/her parent to be cautioned by a Senior Sergeant, an alternative form of cautioning has been developed in the Wagga Wagga police district. This form of cautioning involves the juvenile offender with his/her family group and the victim with his/her family group or significant others.

A conference chaired by the cautioning officer is held with all parties and the process confronts the juvenile offender with the offence and provides an opportunity for restitution or reparation. It should be noted that the method of cautioning in Wagga Wagga is part of a local model of community based policing. Details on the Wagga form of cautioning have been provided at this National Conference on Juvenile Justice by Senior Sergeant Terry O'Connell, NSW Police Service (*see* pp. 221-32 of this volume).

Early indications are that the form of cautioning developed in Wagga Wagga is effective. Prior to the introduction of the new form of cautioning, 56 per cent of young people were charged. The current rate of police charging is approximately 28 per cent. Out of ninety-nine appearances before the cautioning panel in Wagga Wagga, only nine juvenile offenders have re-offended in the past twelve months.

Community alternatives to court processing

The third significant issue to juvenile justice is the use of community alternatives to court processing. In NSW a variety of alternative mechanisms to the court processing of juvenile offenders has emerged as the community, juvenile justice personnel and the courts have searched for better ways of responding to the deeds and needs of juvenile offenders. Once again, the extent to which community alternatives to court processing are used impacts upon the number of young people who receive a court order and are managed by the Office of Juvenile Justice.

The mechanisms in NSW are the Koori Community Justice Council at Taree, the Juvenile Justice Panel at Wellington and Community Aid Panels.

Taree Koori Community Justice Council The Taree Koori Community Justice Council is a one-year pilot project funded by the Office of Juvenile Justice. The pilot project, with the support of the local police, specifically targets the local Aboriginal community.

Police are able to refer an Aboriginal juvenile offender who admits to minor offences to the Community Justice Council which consists of five Aboriginal people. The Council is presided over by a coordinator. Police Aboriginal Community Liaison Officers monitor referrals to the Council.

The hierarchy of action that takes place is as follows:

- informal or formal police cautioning;
- police referral to the Community Justice Council; and
- police commenced court action: summons, court attendance notice or charge.

As a result of the Council, juvenile offenders are able to experience the consequence of their actions by making reparation, under supervision, to the community.

Wellington Juvenile Justice Panel The Wellington Juvenile Justice Panel is a community based program aimed at children of a young age who are habitually encountered on the street and are considered likely to become involved in the juvenile justice system, and minor offenders who have previously received warnings by the police.

The Wellington Juvenile Justice Panel consists of an elected volunteer chairperson and deputy chairperson and a broad range of Aboriginal and non Aboriginal community representatives. The volunteer representatives work on a rotational roster with four to six people on each panel. The hierarchy of action that takes place is as follows:

- informal police cautioning;
- police referral of juvenile offender to the Juvenile Justice Panel;
- formal police cautioning; and

- police commence court action: summons, court attendance notice, or charge.

It should be noted that a juvenile offender may be referred to a panel on several occasions before formal cautioning.

Community Aid Panels In March 1992 there were fifty-five Community Aid Panels operating throughout New South Wales. These Panels are coordinated by the NSW Police Service and can include police officers, local solicitors, and members of the local community and are part of the court process. A magistrate can adjourn a juvenile matter for several months to enable a young person to undertake community work at the direction of the community aid panel. The young person then returns to court at which time the case is usually dismissed with a caution.

Aboriginal people and juvenile justice in NSW

The final area to which consideration must be given is the over-representation of Aboriginal young people in the juvenile justice system and Aboriginal juveniles and juvenile justice in New South Wales. This section will only consider several general issues.

A survey of Aboriginal juveniles in detention conducted on 24 February 1992, found that there were ninety-six Aboriginal juveniles in Juvenile Justice Centres while the total number of detainees was 416. Of these seventy-two Aboriginal juveniles were on a control order, twenty-two were on remand and two were on both a control order and remand. The overwhelming majority of Aboriginal juveniles were in detention for property offences (55.4 per cent) whilst the minority were being detained for offences against the person (19.6 per cent) and good order offences (19 per cent).

The over-representation of Aboriginal young people in Juvenile Justice Centres is clearly unacceptable. However, a significant reduction in the level of Aboriginal over representation in Juvenile Justice Centres will only occur through the effective use of diversionary mechanisms such as police cautioning, the establishment of appropriate strategies at the early stages of the juvenile justice system which have been outlined and full utilisation of existing sentencing options such as recognisance with conditions, and the development of culturally appropriate programs.

These strategies should include specific crime prevention initiatives for Aboriginal juveniles and their communities, an increase in the use of informal warnings and cautions by police, an increase in the number of pre court diversionary schemes, suitable programs for the full utilisation of sentencing options and a wider range of community based sentencing options for the courts.

Culturally appropriate services and programs for Aboriginal juvenile offenders and those at risk of offending need to be provided in each of the key areas of the juvenile justice system. These areas include:

- community based policing;

- crime prevention;
- pre court diversion;
- court services;
- community based sentencing options;
- Juvenile Justice Community Services;
- Juvenile Justice Centres;
- counselling services; and
- post release support.

The decision as to what is culturally appropriate in any given situation, should be a decision of Aboriginal people in accordance with the principles of self-determination.

The Office of Juvenile Justice seeks to achieve equitable outcomes for Aboriginal young people at each and every stage of the juvenile justice system through the development of culturally appropriate processes, procedures, services and programs. However, the Office recognises that the police and the courts play a major role at key stages of the system and that decisions at these stages have a significant impact on Aboriginal young people.

The Office also recognises that the needs of Aboriginal communities throughout NSW are not homogeneous and that each community has a particular history with differing needs and priorities. Accordingly, services and programs for Aboriginal juveniles will be developed at the local community level in order to ensure that they are relevant, supported by the community and targeted to community needs.

The Future of Juvenile Justice in NSW

The Importance of inter-agency cooperation

In order to achieve reform and move successfully into the future there must be consistency in the direction taken by all the players in the juvenile criminal justice system. The formation of the Ministry for Justice with responsibility for the Office of Juvenile Justice, adult Corrective Services and Courts Administration in New South Wales has been important to this process.

The Green Paper (1993) on the *Future Directions for Juvenile Justice in NSW*, prepared by the Juvenile Justice Advisory Council strongly emphasises the importance of inter-agency coordination and cooperation.

Coordination of the key agencies involved in the juvenile justice system is crucial for the effective operation of the system and for moving ahead with policies for the future. Coordination ensures:

- consistency in strategic planning, policy and program development and monitoring and evaluation;
- effective utilisation of resources;

- elimination of duplication; and
- achievement of Government objectives.

Reference is made to work being undertaken overseas, particularly in the United Kingdom, as information and material were collected during a study tour undertaken by the Director of the Office of Juvenile Justice (NSW) and the Policy Adviser to the Minister for Justice. Progress being made overseas on increasing the use of community based sentencing options instead of custody is of interest in New South Wales.

Changing community attitudes

The view must be dispelled in the community that giving juveniles custodial sentences as a "short, sharp, shock in order to set them on the straight and narrow" is effective.

The disadvantages of custodial sentencing for young offenders were highlighted in the Green Paper, *Punishment, Custody and the Community*, published by the British Home Office in July 1988. The Paper stated that:

> Most young offenders grow out of crime as they become more mature and responsible. They need encouragement and help to become law abiding. Even a short period of custody is quite likely to confirm them as criminals, particularly as they acquire new criminal skills from more sophisticated offenders. They see themselves labelled as criminals and behave accordingly.

The task therefore has been for all the organisations concerned with youth crime and young offenders to coordinate their efforts to ensure that effective and relevant community-based options are available so that custody is only used in cases where there is genuinely no alternative (NACRO 1991, p. 1).

Of key importance to the future of juvenile justice is an acceptance of a presumption in favour of using community based penalties as the "right" sort of reaction to offenders.

In order that community based sentences are recognised as being credible and valuable options there must be far greater awareness of what it means to receive such a sentence within the community, by the judiciary and importantly the media. The Office of Juvenile Justice in NSW is integral to promoting information and educating the public on what it means to undertake a community based order. Community based penalties must be readily understood and straight forward to administer.

Publicity must be given to the very short terms juveniles spend in detention, usually less than six months, and how little this does in terms of impacting upon their offending behaviour or breaking the cycle of crime. Six months is too short a time for completing educational or vocational training and the negative impact of dislocation from school, or employment, family and friends is hard to estimate. Preliminary results from a study by the NSW Office of Juvenile Justice indicate that recidivists surveyed in detention in April 1992 had committed offences more serious than their initial proven

offence receiving custody in over 50 per cent of cases. Earlier periods in detention had therefore not successfully diverted these juveniles from offending.

Research is necessary to assess community attitudes to crime and offenders in order to identify the problems and needs, as perceived by local communities, which can then be addressed. Providing regular information to the community and participants in the criminal justice system on levels of crimes committed, issues such as recidivism and the effectiveness of community programs will help to involve the public and raise awareness.

Publicising the results of initiatives undertaken with young people, the impact of programs, achievements by juvenile offenders and crime prevention strategies can all assist in winning community opinion and influence media coverage.

Public fear of crime, which is frequently influenced by the media, should not be allowed to adversely affect the way in which government agencies respond to young people and offenders.

The participation of the community in the juvenile justice system can be encouraged in many ways. The involvement of the victim in the criminal justice process has previously been referred to in the discussion on the Wagga form of cautioning and the involvement of the community was considered in the discussion on pre and post court panel mechanisms. There is the scope for a greater involvement by non government agencies in the delivery of services and programs. Crime prevention strategies involve the whole community and many agencies including Local Government, and the Department of School Education which have a significant role to play. Young people themselves must be consulted during the policy making process and in establishing the provision of services.

Involving community members in programs with juvenile offenders can positively affect attitudes, for example through participation as sessional supervisors for Community Service Orders, the use of volunteers and non government agencies. This helps to promote the acceptance of those programs and reinforces the notion that juvenile offenders continue to be part of the community and the community itself has a responsibility toward those young people.

Increasing the use of community sentences instead of detention

The future of juvenile justice in NSW is directed towards providing credible sentencing options which will offer the means for more juveniles to be managed within the community, as opposed to custody.

Reducing numbers in custody is often interpreted as meaning "going soft" on offenders. Recognition must be given to the fact that community based sentences are punishments in themselves. The common reference to community based sentencing options as "alternatives" to detention, implicitly suggests that offenders should have received a custodial sentence but were given a softer option. It must be understood and accepted that community options are appropriate for the offence committed and do not constitute a penalty that is less than that which is appropriate. Community based schemes which aim to strengthen and support juveniles' links with the home, school

and the workplace are likely to provide a more effective way of dealing with persistent and serious offenders than the costly and negative experience of custody. Such schemes can also provide adequate levels of supervision.

The use of available sentencing options by the court is in part a reflection upon the credibility of those options. Recent research undertaken by the NSW Office of Juvenile Justice revealed that few children in full time detention previously had the benefit of a supervised probation, a supervised recognisance or a Community Service Order. Fewer than one in four detainees (21.8 per cent) on a control order as at 13 April 1992 had previously received a supervised probation or recognisance order. Only twenty of 275 (7.3 per cent), previously had the benefit of a Community Service Order, despite its status as the penultimate penalty.

The Office of Juvenile Justice will in future be focussing upon clearly distinguishing between the sentencing options of probation and recognisance with supervision. It is intended that through offering programs associated with each sentence these community-based options will become more attractive to the courts. It is also important to highlight the management of these sentencing options. The level of supervision for recognisance, probation and parole needs to be addressed to ensure it is satisfactory to the judiciary and the community.

It is recognised that the simple provision of non-custodial options does not necessarily result in a reduction in the use of custody. There is always the possibility of net widening occurring and this once again emphasises the value of the judiciary having input to the process of determining the nature and availability of sentencing options.

Participation by the judiciary in the development of sentencing options and programs has had positive results overseas particularly in the reduced use of custodial sentences. In the Federal Republic of Germany between 1983 and 1988 the number of juveniles in custody (aged 14-20 years) decreased by 39 per cent. Since then the decrease has either been continued or maintained (Berinson 1991, p. 30). One of the most significant factors in the reduction of the juvenile population in detention reported was the change in judicial attitudes as reflected in changes in sentencing practices. Judges provided leadership in rejecting the idea that imprisonment was a constructive sanction, particularly for juveniles. Four factors were identified as impacting upon judicial attitudes:

- consultation with the judiciary on proposals for the implementation of change;
- involvement of the judiciary in the establishment of diversionary projects;
- provision of statistical information to judges on sentencing practices; and
- appointment of female judges which led to a greater willingness to adopt alternative approaches.

The first three points are achievable in New South Wales. Reference has already been made to consulting and involving the judiciary in proposals for change and establishing programs. The judiciary could become participants in helping to identify what referral programs were needed locally. In Germany, members of the judiciary are involved on the boards of management of some programs. This has the benefit of clearly showing what is undertaken by offenders, how the program is managed and how offending behaviour is addressed. The provision of feedback to the courts on sentences imposed by offence category, by level of court and location would assist the judiciary in making state wide comparisons and information on sentencing costs could also be provided.

In England and Wales the judiciary have become involved in juvenile justice programs as part of interagency cooperation within the Intermediate Treatment Initiative. In 1983 funding was made available to voluntary organisations working in partnership with local authorities to provide intensive, community based projects for juvenile offenders as a direct alternative to care orders and custodial sentences. Project management communities were established in each local authority that received funding for the Initiative and fifty of the sixty-seven committees included magistrates (75 per cent).

Research into the Initiative for the period 1983-1989 indicated:

> The success of Initiative Projects in affecting change in local sentencing practice may be in large part due to this involvement. Initially magistrates were concerned not to compromise their independence (as they and their clerks saw it), and in some areas were reluctant to participate. In November 1985, the Lord Chancellor gave them the go ahead to become involved (NACRO 1991, p. 31).

Similarly, in New South Wales such participation would not interfere with the discretion of the judiciary, but would be intended to invite a greater involvement by the judiciary within the criminal justice system. This is vital to bringing about change.

One strategy successfully adopted overseas for increasing the use of community sentences whilst reducing numbers in custody, is the adoption of statutory criteria for the imposition of a custodial sentence. In the United Kingdom the 1982 Criminal Justice Act, which came into force in May 1983, laid down new statutory criteria for the use of custodial sentences for young offenders aged under twenty-one years. It stated that a custodial sentence should only be imposed on an offender aged under twenty-one when:

> . . . no other method of dealing with him is appropriate because it appears to the court that he is unwilling to respond to non-custodial penalties or because a custodial sentence is necessary for the protection of the public or because the offence was so serious that a non-custodial sentence could not be justified (NACRO 1992, p. 3).

The statutory criteria are distinct from the more rigid approach to sentencing guidelines adopted at the Federal level in the United States.

Between 1983 and 1989 these criteria helped to reduce the annual number of custodial sentences for juveniles (under 17) from 6,800 to 3,400 and for young adults (17-20) from 24,000 to 14,000 (NACRO 1990, p. 6). The criteria were found to be particularly useful in appeals against inappropriate custodial sentences.

Further amendments were made to the legislation in 1988 which refined the circumstances in which a custodial sentence could be given and extended similar statutory criteria to the sentencing of adult offenders. In view of the earlier references to the discretion of the judiciary with respect to consultation and involvement in the criminal justice process, it is even more pertinent to address the issue of discretion with respect to statutory criteria. In the United Kingdom the Government's White Paper *Crime, Justice and Protecting the Public* (February 1990) stated that:

> The present legislation on the use of custody for young offenders shows that it is possible for Parliament to give guidance on the use of custody without placing intolerable restrictions on the discretion of the courts. The legislation defines in general terms the circumstances which justify a custodial sentence. When a court gives a custodial sentence to a young offender, it has to explain, in open court, why it has done so. A more consistent approach to sentencing young offenders has emerged from the Court of Appeal's guidance on interpreting the legislation. This points the way forward for the future . . . The Government intends to introduce legislation which would require a court, before it gives a custodial sentence, to be satisfied that the offence for which the offender has been convicted by the court is so serious that only a custodial sentence is justified or that a custodial sentence is necessary to protect the public from serious harm (NACRO 1992, p. 6).

The author considers that the adoption of statutory criteria is an important issue to place on the national agenda.

Successfully managing those in detention

Where juveniles are sentenced to detention they will no longer be managed separately from Juvenile Justice Community Services. A continuum of service provision from the community, into detention and back into the community is one of the new directions for the future in NSW. This will be reflected in:

- case management commencing in the community and continuing into detention;
- case conferences involving community based staff prior to exit from detention;
- establishing pre discharge units;
- focusing within juvenile justice centres upon release into the community.

The special needs of offenders in detention will be examined more closely and assessment made as to whether the programs available meet those needs.

Young women in custody

In particular there is recognition that young women in custody have specific needs that may be different, or need to be managed differently, to young men in custody. Whilst the number of girls in custody in NSW is low, twenty-one as at 7 July 1992 as compared with 365 boys, appropriate services and programs must be provided.

The Report of the Standing Committee on Social Issues, *Juvenile Justice in New South Wales*, May 1992, identified that the vast majority of girls who enter the system had been victims of abuse. Members of the Committee were advised that up to 80 to 90 per cent of girls at the Juvenile Justice Centre accommodating most girls had drug dependencies and low self-esteem as a result of their difficult backgrounds. Aboriginal girls were over represented relative to their population in the wider community (Standing Committee on Social Issues 1992, pp. 139-40).

A Working Party on Girls in Custody was established in June 1992 with members from the Office of Juvenile Justice and the community. The purpose is to review and evaluate programs for young women, staffing arrangements, staff training, case management, post release follow up and the special needs of girls as distinct from boys.

Aboriginal young people in custody

The Office of Juvenile Justice provides a range of programs for Aboriginal juvenile offenders in Juvenile Justice Centres and has put in place a range of measures to ensure the well-being of Aboriginal juveniles detained in the Centres.

The Office of Juvenile Justice has also provided funding for specific programs for Aboriginal juvenile offenders such as a Bail Hostel at Redfern, the Yulumuncka Youth Support Centre at Bourke, the Koori Community Justice Council at Taree, the Aboriginal Juvenile Placement Program, Aboriginal Community Workers and a Court Support and Post-release program in South Sydney. The author believes that it is essential for Aboriginal communities and organisations to be consulted in the development, design, implementation, management, monitoring and evaluation of juvenile justice programs specifically for Aboriginal juvenile offenders.

Furthermore, this consultation must extend to and include negotiation with Aboriginal organisations and Aboriginal young people and be based on a recognition of and respect for the right of Aboriginal people to self determination and to their personal and cultural identity.

Young people aged eighteen years or over in custody

The number of young people in custody aged eighteen years or over was 121 on 24 July 1992 out of a total population of 383 (31.6 per cent). Programs are required for this group which place greater emphasis upon independent living skills, vocational skills and sexuality. Community reintegration must be the central focus of programs.

Case management

The introduction of case management into Juvenile Justice Centres will provide young people in custody with a range of options that enable them to reach their potential for successful reintegration into the community, and develop alternatives to offending by taking into account employment issues, family issues and so on. Issues including age, gender, cultural background, and entry level skills will all be addressed through this process.

In future, far greater emphasis is to be placed upon the return of young offenders to the community, and an integration of services between Juvenile Justice Centres and Juvenile Justice Community Services, community organisations and other agencies is planned. The health care program for juveniles in detention based upon assessment will also be part of the case management plan. Specialised care must be provided to juveniles who experience mental health problems, youth with disability and juveniles with drug and/or alcohol problems.

Managing serious offenders

In view of the future direction which will promote the use of community sentencing options and will ensure that such options are credible, it is anticipated that those offenders in custody will, over time, be the more serious and entrenched offenders. Special consideration will need to be given to what programs can effectively address their behaviour.

Conclusion

In conclusion, there are many possibilities for moving in new directions in New South Wales. The Report of the Standing Committee on Social Issues *Juvenile Justice in NSW* and the Green Paper, *Future Directions for Juvenile Justice in NSW* have provided valuable opportunities to address major problems in relation to key areas of the juvenile justice system. In this paper particular issues have been singled out that are of significance to the Office of Juvenile Justice in NSW and which may be of interest at a national level.

In NSW the future lies in a coordinated approach to juvenile justice in which the Office of Juvenile Justice plays a proactive role in achieving change. Whilst the Office is the recipient of juveniles through the court process, it is possible to minimise the extent to which young people become entrenched in the criminal justice system through crime prevention strategies, early intervention in the juvenile justice system and community alternatives to court processing. What can realistically be achieved in terms of the goal of using community sentences in preference to detention will be significantly affected by community attitudes to offending. To ensure the long-term viability of the reforms being introduced to Juvenile Justice in New South Wales, the community needs to be aware of the relative ineffectiveness of custody in breaking the cycle of crime.

References

Berinson, Hon. J., MLC Western Australia, November 12, 1991, "Report of the Official Visit to Europe to Examine Criminal Justice Policies", Unpublished, Western Australia.

British Government 1990, *Crime, Justice and Protecting the Public*, White Paper, British Home Office, London.

British Home Office 1988, *Punishment, Custody and the Community*, Green Paper, British Home Office, London.

Juvenile Justice Advisory Council of NSW, 1993, *Future Directions for Juvenile Justice in NSW—Green Paper*, Quadpak Consultants, Sydney.

National Association for the Care and Resettlement of Offenders 1990, *Criminal Justice Policy for the 1990s, a response to the Government's White Paper "Crime, Justice and Protecting the Public"*, NACRO, London.

National Association for the Care and Resettlement of Offenders 1991, *Seizing the Initiative, NACRO's Final Report on the DHSS Intermediate Treatment Initiative to Divert Juvenile Offenders from Care and Custody: 1983-1989*, NACRO, London.

National Association for the Care and Resettlement of Offenders 1991, *NACRO Young Offenders Committee Policy Paper 1: Reducing the Use of Custody for Young Offenders*, NACRO, London.

National Association for the Care and Resettlement of Offenders 1992, *Criminal Justice Act 1991, Statutory Criteria for Custodial Sentences*, NACRO, London.

Parliament of NSW Legislative Council Standing Committee on Social Issues 1992, May, *Juvenile Justice in New South Wales*, Report no. 4, Headquarters Pty Ltd, Sydney.

Youth Justice Coalition 1990, *Kids in Justice: a blueprint for the 90s*, Youth Justice Coalition, Sydney.

CONTACT WITH THE JUSTICE SYSTEM OVER THE JUVENILE YEARS

Frank Morgan

The Current Focus on Youth Crime

THIS PAPER WILL DISCUSS BRIEFLY THE CURRENT SOCIAL CLIMATE regarding youth crime. The current media attention on juvenile crime has many in the community believing that we are in the midst of an unprecedented juvenile crime wave. Media sources carry regular reports about high speed car chases; the worst examples of graffiti vandalism are brought to our notice; and we are frequently tempted to believe that juveniles are responsible for the bulk of serious crime. However, there is no statistical evidence that juvenile crime is increasing at a faster rate than adult crime. It is true that recorded crime has increased substantially in most offence categories in South Australia in the past ten years. Nevertheless, it is also evident that:

- juvenile offenders are more likely to be apprehended for property crimes, rather than crimes of violence against the person;
- the proportion of juveniles among individuals apprehended has decreased in almost all "selected offence" categories used by the South Australian Police Department (*see* Figure 1);
- the total number of juvenile appearances before Children's Aid Panels and the Children's Court was lower in 1990-91 than it was five years earlier (*see* Figure 2);
- current methods of recording tend to over-estimate the number of crimes attributable to juveniles.

The over-estimate of crimes due to juvenile offenders occurs because:

- juveniles have a greater tendency than adults to offend in groups, thus inflating the apprehension statistics, and

- it is generally accepted that juveniles are more likely to be detected than adults.

One must also acknowledge that one reason for the lower numbers of juvenile appearances before courts and panels is the decline in that section of the South Australian population aged ten to seventeen.

The Current Research

The report *Juvenile Justice I* (Morgan & Gardner 1992) describes in detail the young offenders database maintained by the Department for Family and Community Services (FACS) and the South Australian legislation covering juvenile offenders. The report also describes the way in which the researchers restructured the database so that the complete history of appearances before courts and panels was linked to each young offender recorded in the database.

Juvenile Justice 1 also outlines the results of a series of longitudinal research studies in other countries. Of most interest in the present context is New Zealand longitudinal research on the recorded offending of a sample of over 25 000 boys born in 1957 (Donnell & Lovell 1982). Further research has followed these boys through to the age of twenty-five (Lovell & Norris 1990).

The current South Australian research examines recorded contact with the Children's Court and Children's Aid Panels over the whole juvenile age span (ten to seventeen years at time of offence). Previous research and statistical publications have reported the degree of juvenile contact in a single year, whereas the current research allows us to look back over a completed juvenile offending "career". (The word career should be used with caution since, for most young offenders, their recorded career consists of a single appearance before a court or panel).

The first stage of the research examines two groups of young people—those born in 1962 and those born in 1972. These two groups, or *cohorts* of children, were chosen because they represented the earliest and the latest age-groups whose completed offending histories were contained in the database.

The results, so far, have examined two principal measures of offending. These are:

- prevalence of contact (the proportion of the age group that is registered as having a criminal justice contact), and

- the frequency of offending (the number of contacts recorded by those individuals in the young offenders database).

Figure 1

Percentage of Juvenile Apprehensions for Selected Offences, 1979-80 to 1990-91, South Australia

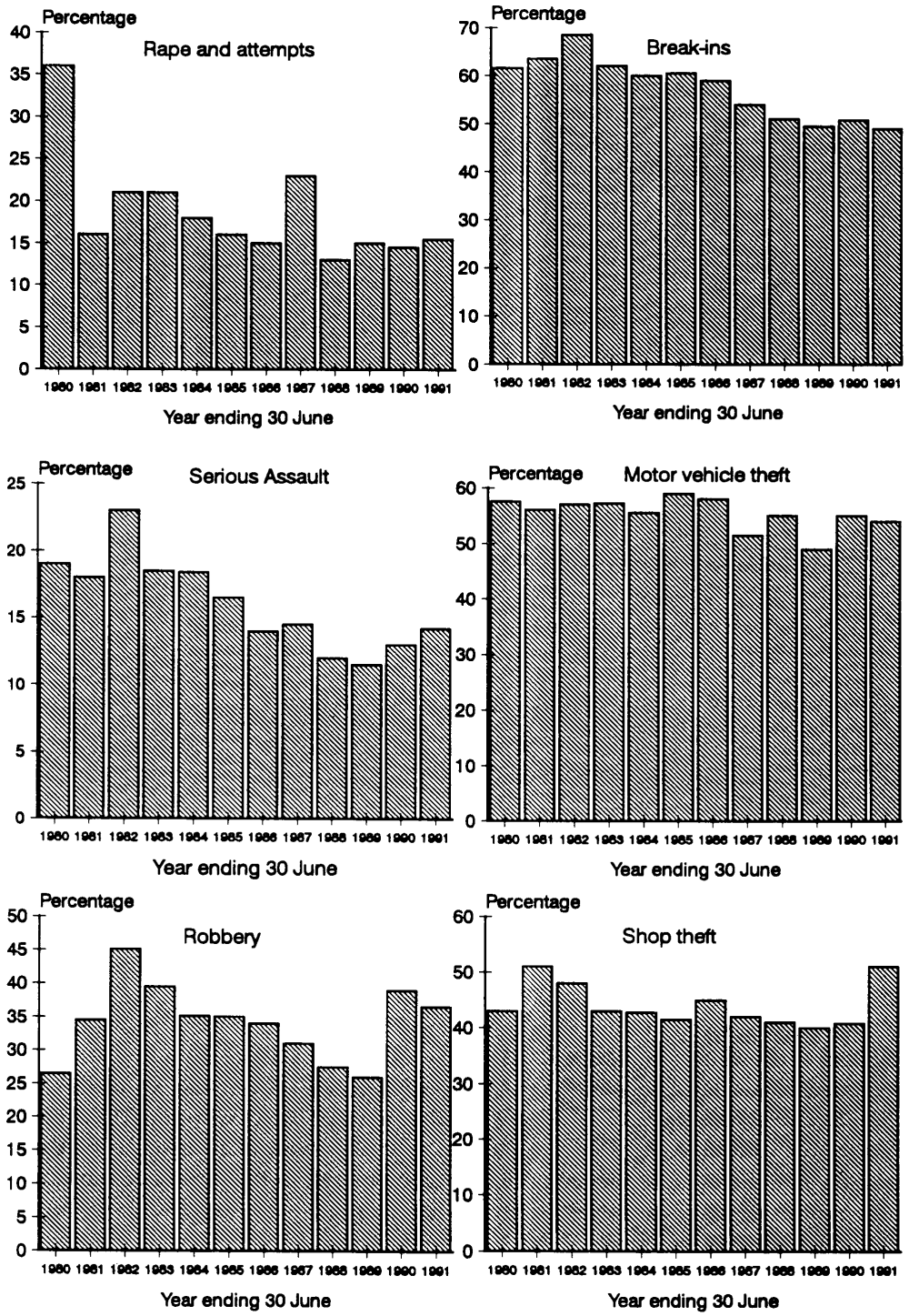
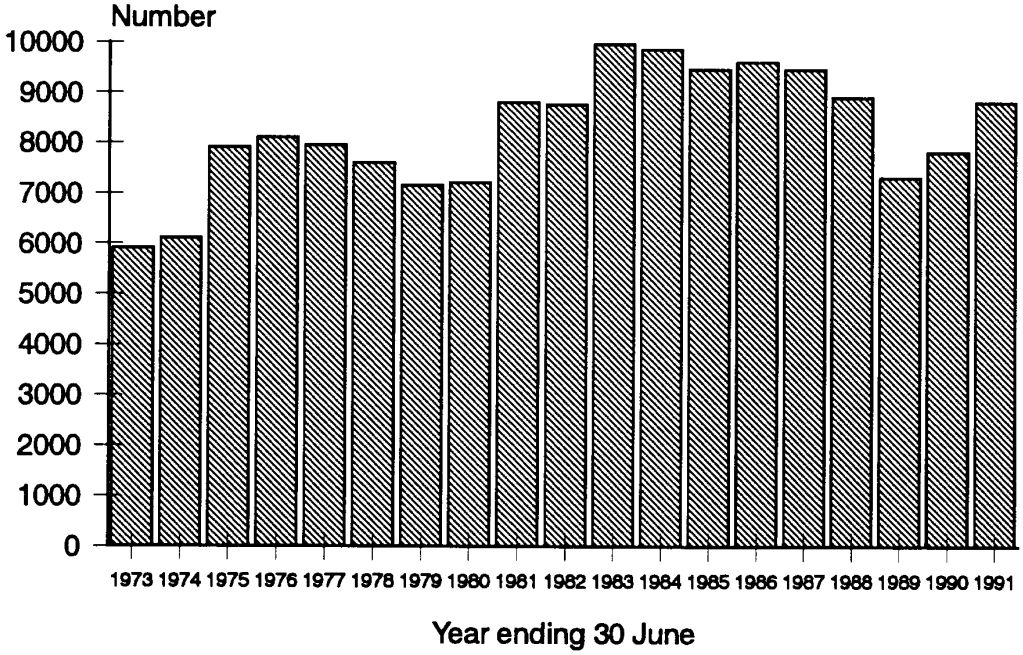


Figure 2

Juvenile Appearances at Children's Courts and Aid Panels, 1972-73 to 1990-91, South Australia



The research is not yet complete since it has not examined, in any detail, the type of offence for which contact is recorded, nor has it examined the length of time over which contact has been recorded. Nevertheless, the available results are of interest in that they report the first Australian data on the prevalence and frequency of offending through the juvenile years.

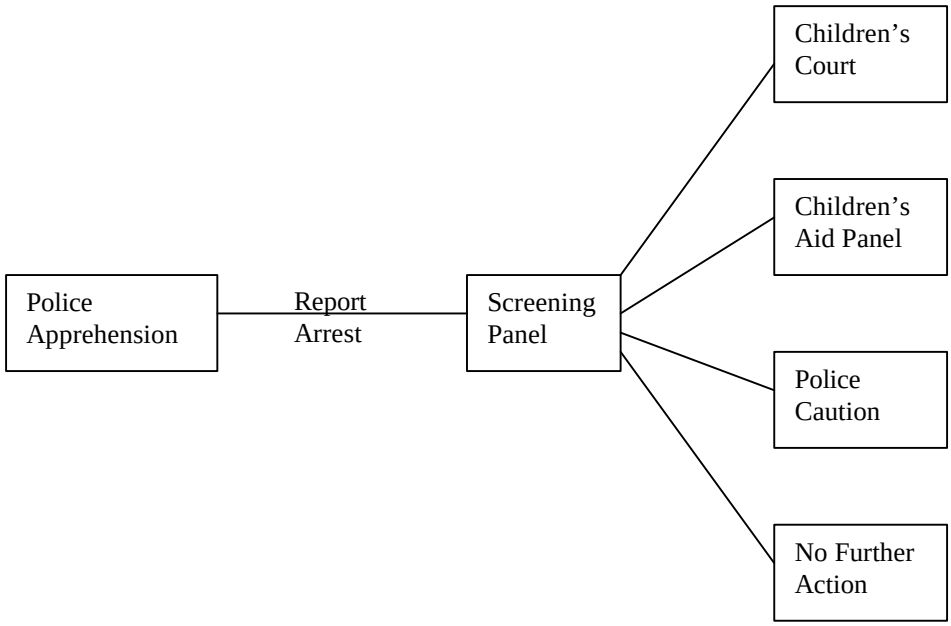
A highly simplified diagram of the South Australian juvenile justice system is presented in Figure 3. This shows that apprehended youths are first referred to a screening panel, consisting of a police officer and an officer of FACS. The screening panel decides whether to refer the case to the Children's Court, a Children's Aid Panel, a formal police caution, or to take no further action. There were few formal police cautions issued in the period covered by the research, but increasing numbers of cautions are estimated to have occurred since 1991.

Screening panels were introduced in 1979 and so children in the first cohort faced a more rule governed system of referral to court or panels. In fact, all youths aged sixteen and over, and all those arrested, were referred to court automatically, prior to 1979.

The two cohorts described in this study to a large extent reflect changes in the South Australian juvenile justice system. Most appearances for the first cohort occurred before the 1979 changes to the legislation, while the second cohort appeared after the changes. The difference between the two cohorts in the percentage of South Australian children appearing before a panel or court tells us as much about the change in the operation of the system as it does about differences in children over time.

Figure 3

South Australian Juvenile Justice Schema



Prevalence of Contact

Current statistical sources suggest that approximately 4 per cent of children aged ten to seventeen appear before a Children's Court or Aid Panel in South Australia in any one year. However, Tables 1 to 6 show the percentage of children who have *ever* appeared—not just those in a single year. Table 1 shows the number of children in South Australia that had some contact with the juvenile justice system between the ages of ten and eighteen years. (Children may appear before the Children's Court or Aid Panels at eighteen provided they offended at seventeen or earlier.) About one in five children appeared before a Children's Court or Aid Panel during their adolescence. A slightly higher percentage of the cohort born in 1972 was exposed to a court or panel compared with the cohort born in 1962.

The effects of the 1979 changes in legislation seem to be reflected in the figures shown below. The proportion of South Australian children who had contact only with an Aid Panel was greater for the second cohort, while the proportion who had contact with a Children's Court has declined.

Table 1

Children who had some Contact with Juvenile Justice, Cohorts born 1962 & 1972, South Australia

Cohort	*Number*	*Percentage of cohort*
1962	4,389	18.1
1972	4,788	21.1

Table 2 shows the proportion of children who had some contact with the Children's Court. As this option is considered more serious than appearing before an Aid Panel, it is not surprising that fewer children (less than 10 per cent) are exposed to this section of the justice system.

Table 2

Children who had some Contact with the Children's Court, Cohorts born 1962 & 1972, South Australia

Cohort	*Number*	*Percentage of cohort*
1962	1,893	7.8
1972	1,279	5.6

Table 3 shows the number of children who had contact with an Aid Panel only. These children did not appear before a court. The two cohorts differ in the percentage of children appearing before a panel or court. The cohort born

in 1962 appeared at a greater rate before a Children's Court than did the cohort born in 1972 (7.8 per cent compared to 5.6 per cent). However the pattern is reversed for panel contact. A greater percentage of children in the 1972 cohort appeared only before an Aid Panel (15.5 per cent compared to 10.3 per cent).

Table 3

Children who had Contact only with an Aid Panel, Cohorts born 1962 & 1972, South Australia

Cohort	*Number*	*Percentage of cohort*
1962	2,496	10.3
1972	3,509	15.5

The prevalence of contact is greater for boys than for girls. A quarter of boys born in 1962 had some contact with the justice system while for boys born in 1972, the figure was three out of every ten (29 per cent). By contrast, approximately one in ten girls appeared before an Aid Panel or Children's Court. Like the boys, however, the proportion was greater for the second cohort: 12.6 per cent of those born in 1972 compared with 10.1 per cent of those born in 1962.

Table 4

Males who had some Contact with Juvenile Justice, Cohorts born 1962 & 1972, South Australia

Cohort	*Number*	*Percentage of cohort*
1962	3,188	25.6
1972	3,363	29.0

Table 5

Females who had some Contact with Juvenile Justice, Cohorts born 1962 & 1972, South Australia

Cohort	*Number*	*Percentage of cohort*
1962	1,189	10.1
1972	1,391	12.6

It is difficult to compare the proportion of Aboriginal youth in each cohort who had contact with the justice system. Increased willingness of Aboriginals and Torres Strait Islanders to identify themselves as such, led to a 45 per cent increase in the recorded Aboriginal population of South Australia between the 1981 and 1986 Census, compared with a 5 per cent increase for the total population. For these reasons the researchers decided to calculate the proportion of Aboriginal youth in contact with the justice system for the second cohort only. These children were 14-years-old at the time of the 1986 Census.

Within these constraints it is estimated that 55 per cent of Aboriginal youth had contact with the juvenile justice system during their adolescence (compared to 21 per cent of the total youth population). Nearly seven out of ten Aboriginal boys and four out of ten Aboriginal girls appeared before an Aid Panel or Children's Court.

The proportion of young offenders involved in violent crimes is shown in Table 6. Although the figures are small it is clear that there was a greater proportion of violent young offenders in the 1972 cohort: 2.7 per cent of the young offenders born in 1972, compared with 1.3 per cent of the offenders born in 1962. These figures represent less than one percent of each cohort. Of the estimated 24,219 young South Australians in the 1962 cohort 0.2 per cent had appeared for a violent offence, and of the estimated 22,667 children in the 1972 cohort 0.6 per cent had appeared for a violent offence.

Table 6

Proportion of Children involved in at least one serious Crime of Violence*, Cohorts born 1962 & 1972, South Australia

Cohort	*Number*	*Percentage of offenders*	*Percentage of cohort*
1962	57	1.3	0.2
1972	127	2.7	0.6

* A serious crime of violence is defined as one of the following : murder, attempted murder, manslaughter, cause death by dangerous driving, malicious wounding, grievous bodily harm, assault occasioning actual bodily harm, rape, attempted rape, robbery, assault with intent to rob, demand money with menaces.

Distribution of Young Offender Appearances Between Courts and Panels

The percentage of young offenders who never appear before a Children's Court was greater in the second cohort. This increase was particularly noticeable for Aboriginal youth. Of the Aboriginal young offenders born in 1962, just over a quarter (26.1 per cent) had no court appearances. For Aboriginal young offenders born in 1972 the figure was 47.1 per cent. Although the proportion of Aboriginal young offenders who only appeared before an Aid Panel nearly doubled between the two cohorts it was still

substantially less than for non-Aboriginal young offenders, three-quarters (74.6 per cent) of whom had no court appearance.

Few female young offenders had contact with the Children's Court. Of the female young offenders born in 1962, three-quarters (75.4 per cent) appeared only before an Aid Panel: this percentage compares with 85 per cent for female young offenders born in 1972.

Table 7

Percentage of male and female offenders who had contact only with an Aid Panel, Cohorts born 1962 & 1972, South Australia

Cohort	*Males*	*Females*
1962	50.1%	75.4%
1972	68.6%	85.0%

Table 8

Percentage of Aboriginal and Non-Aboriginal Offenders who had Contact only with an Aid Panel, Cohorts born 1962 & 1972, South Australia

Cohort	*Aboriginal*	*Non-Aboriginal*
1962	26.1%	57.9%
1972	47.1%	74.6%

Frequency of Appearance

The majority of children had only one appearance before either a court or panel. Nearly 70 per cent of the 1962 cohort, and 65 per cent of the 1972 cohort had a single appearance. Very few children had more than five appearances (3.8 per cent for the 1962 cohort, 4.7 per cent for the 1972 cohort). There were some children with a large number of appearances. Three children born in 1962 had more than 20 appearances each, as did three children born in 1972.

Table 9

Total Court and Panel Appearances,
Cohorts born 1962 & 1972, South Australia

*Number of appearances**	*Children 1962*	*Percentage 1962*	*Children 1972*	*Percentage 1972*
1	3,042	69.3	3,093	64.6
2	675	15.4	827	17.3
3	276	6.3	342	7.1
4	144	3.3	215	4.5
5	85	1.9	86	1.8
6	40	0.9	57	1.2
7	38	0.9	49	1.0
8	23	0.5	27	0.6
9	23	0.5	25	0.5
10-14	36	0.8	52	1.1
15-24	7	0.2	15	0.3
Total	4,389	100.0	4,788	100.0

* Mean number of appearances: 1962 offenders = 1.7, 1972 offenders = 1.9

Table 10

Total Court and Panel Appearances by Sex: Percentage
Cohorts born 1962 & 1972, South Australia

Number of appearances	*Males 1962*	*Males 1972*	*Females 1962*	*Females 1972*
1	62.9	59.7	87.1	77.7
2	17.8	18.0	8.2	13.7
3	7.9	8.3	2.1	4.5
4	4.0	5.6	1.3	1.9
5	2.5	2.2	0.4	0.9
6-10	3.9	4.7	0.7	1.2
11-20	0.9	1.4	0.3	0.1
21+	0.1	0.1	0.0	0.0
Total	100.0 (N=3,188)	100.0 (N=3,363)	100.0 (N=1,189)	100.0 (N=1391)
Mean number of appearances	1.93	2.09	1.25	1.41

Males appeared more frequently than did females. For the 1962 cohort 37.1 per cent of males had more than one appearance compared with 12.9 per cent of females. The 1972 cohort saw both males and females increase the

number of their appearances: 40.3 per cent of males and 22.3 per cent of females had more than one appearance.

Aboriginal people appeared more frequently than did non-Aboriginal people. Just over 20 per cent of Aboriginal youth had more than five appearances compared with 4 per cent of non-Aboriginal people.

Table 11

Total Court and Panel Appearances by Race: Percentage
Cohorts born 1962 & 1972, South Australia

Number of appearances	*Aboriginal 1962*	*Aboriginal 1972*	*Non-Aboriginal 1962*	*Non-Aboriginal 1972*
1	39.6	39.9	70.4	66.0
2	11.2	13.9	15.3	17.1
3	6.7	11.1	6.3	7.0
4	9.7	7.2	3.1	4.4
5	10.4	6.3	1.7	1.6
6-10	10.4	14.4	2.8	3.1
11-20	10.4	6.7	0.4	0.8
21+	1.5	0.5	0.0	0.0
Total	100.0	100.0	100.0	100.0
	(N=134)	(N=208)	(N=4,244)	(N=4,555)
Mean number of appearances	4.36	3.74	1.66	1.81

Children who appeared in court did so more frequently than those who appeared before panels. The maximum number of court appearances for both cohorts was twenty-two. The maximum number of Aid Panel appearances was six for the 1962 cohort and nine for the 1972 cohort. However, over 94 per cent of offenders in both cohorts appeared up to twice before panels. This pattern is of course integral to the diversionary function of panels, since repeated offending will ensure that the offender "graduates" to court.

Table 12

Total Court Appearances, Cohorts born 1962 & 1972, South Australia

Court Appearances	*Number 1962*	*Percentage 1962*	*Number 1972*	*Percentage 1972*
1	1,230	65.0	665	52.0
2	305	16.1	256	20.0
3	146	7.7	129	10.1
4	65	3.4	59	4.6
5	41	2.2	51	4.0
6	30	1.6	30	2.3
7	20	1.1	22	1.7
8	15	0.8	15	1.2
9	10	0.5	12	0.9
10-14	25	1.3	34	2.7
15-22	6	0.3	6	0.5
Total	1,893	100.0	1,279	100.00

Table 13

Total Panel Appearances, Cohorts born 1962 & 1972, South Australia

Panel Appearances	*Number 1962*	*Percentage 1962*	*Number 1972*	*Percentage 1972*
1	2,682	82.3	3,450	76.3
2	447	13.7	795	17.6
3	104	3.2	221	4.9
4	24	0.7	37	0.8
5	2	0.1	10	0.2
6	1	0.0	5	0.1
7	0	0.0	2	0.0
8	0	0.0	0	0.0
9	0	0.0	1	0.0
Total	3,260	100.00	4,521	100.00

Tables 14 and 15 show, for each birth cohort the re-appearance rate for individuals who first appeared before a court or panel. Very few offenders in the 1972 cohort made their first appearance before a court, and those who did were more likely to make a subsequent appearance, particularly before a court. In the 1962 cohort a much larger number of children made their first appearance before a court and these children were slightly less likely to ever re-appear. These statistics should not be interpreted as indicating the relative effectiveness of courts or panels, since the analysis has made no attempt to control for other factors affecting the recidivism risk of the groups first appearing before courts or panels. One plausible explanation for this pattern runs as follows:

> Very few offenders from the 1972 cohort went to court at their first appearance, and panels improved their relative performance over courts between the 1962 and 1972 cohorts, because sixteen and seventeen year olds from the 1972 cohort allowed to appear at panels. Those appearing for the first time at these ages have good prospects of avoiding recidivism.

Table 14

First Appearance by Subsequent Appearance: Cohort born 1962, South Australia

First Appearance	*Any Subsequent Appearance*			
	None	Court	Aid Panel	N
Children's Court	861 (71.2%)	310 (25.6%)	65 (5.4%)	1,209
Children's Aid Panel	2,199 (69.2%)	684 (21.5%)	561 (17.6%)	3,180

Table 15

First Appearance by Subsequent Appearance: Cohort born 1972, South Australia

First Appearance	*Any Subsequent Appearance*			
	None	Court	Aid Panel	N
Children's Court	236 (64.1%)	124 (33.7%)	26 (7.1%)	368
Children's Aid Panel	2,997 (67.8%)	911 (20.6%)	904 (20.5%)	4,420

Frequency of Offending

Table 16 shows the distribution of offences that were recorded for the two cohorts. These offences will not be the same as the number of offences on police records. Reasons for this include: the removal of some children (and consequently their offences) from the data base through cautions or no further action; negotiations on charges taking place before a court hearing; and the exclusion of charges that were not proven.

The tables that follow show that the majority of children appearing before a court or Aid Panel had only one offence during their entire contact with the juvenile justice system. The two cohorts are very similar in the number of offences dealt with. While the majority of children had only one offence, there are a few children who were responsible for a large number of offences. In the 1962 cohort five children had more than fifty offences each, while in the 1972 cohort eight children had more than fifty offences. Approximately 5 per cent of offenders had been responsible for one-third of the offences dealt with by an Aid Panel or Children's Court. The 1962 cohort had 5.2 per cent of offenders responsible for 33 per cent of offences, 5.4 per cent of males responsible for 32.5 per cent, 4.2 per cent of females responsible for 25.7 per cent. The 1972 cohort showed a similar pattern with 4.8 per cent of offenders responsible for 34.3 per cent of offences, 5.3 per cent of males responsible for 36 per cent, and 5.2 per cent of females responsible for 26.5 per cent.

Table 16

Total Number of Offences, Cohorts born 1962 & 1972, South Australia

Number of offences	*Children 1962*	*Percentage 1962*	*Children 1972*	*Percentage 1972*
1	2,395	54.6	2,707	56.5
2	720	16.4	794	16.6
3	443	10.1	410	8.6
4	229	5.2	234	4.9
5	127	2.9	132	2.8
6-10	269	6.1	280	5.8
11-15	108	2.5	108	2.3
16-20	32	0.7	45	0.9
21-25	34	0.8	23	0.5
26-30	10	0.2	14	0.3
31-35	10	0.2	16	0.3
36-40	4	0.1	10	0.2
>=41	8	0.2	15	3.1
Total	4,389	100.00	4,788	100.00

*Mean number of offences committed by offenders born in 1962 and 1972 was 2.9.

Age patterns of offending

Most children made their first appearance before a court or panel at the age of fourteen years (19.2 per cent 1962, 18.9 per cent 1972). Over half made their first appearance between the ages of thirteen and fifteen years.

Table 17 shows the age at which children first came into contact with the juvenile justice system while Table 18 shows how much contact (first or subsequent) children had at each age. For example, although 19.2 per cent of young offenders had their first contact at age fourteen, nearly a quarter (24 per cent) of all young offenders aged fourteen came into contact with the justice system. The table also shows what percentage of the population had contact at that age. Using the above example, 4.4 per cent of the whole cohort population had some contact at age fourteen.

Table 17

Age at first Appearance before Court or Panel, Cohorts born 1962 & 1972, South Australia

Age	*Number 1962*	*Percentage 1962*	*Number 1972*	*Percentage 1972*
10	107	2.5	116	2.4
11	173	3.9	252	5.3
12	361	8.2	424	8.9
13	705	16.1	717	15.0
14	844	19.2	907	18.9
15	830	18.9	838	17.5
16	580	13.2	727	15.2
17	680	15.7	703	14.7
18	109	2.5	104	2.2
Total	4,389	100.0	4,788	100.00

About two-thirds of children who made their first appearance at the age of ten years, reappeared at a later date. The older the children were before they made their first appearance, the less likely they were to have a reappearance. In part this is because they had less time in which to re-offend than the children who had their first appearance at a younger age. In other words a ten-year-old has seven to eight years in which to reappear, while a sixteen-year-old has only one or two years.

Table 18

Any contact with Court or panel by Age, Cohorts born 1962 & 1972, South Australia

	1962 cohort			***1972 cohort***		
*Age at contact**	*Number*	*Percentage of offenders*	*Percentage of cohort*	*Number of children*	*Percentage of offenders*	*Percentage of cohort*
10	98	2.2	0.4	115	2.4	0.5
11	194	4.4	0.8	272	6.2	1.2
12	403	9.2	1.7	479	10.0	2.1
13	829	18.9	3.4	846	17.7	3.7
14	1,055	24.0	4.4	1,168	24.4	5.0
15	1,215	27.7	5.0	1,288	26.9	5.5
16	1,066	24.3	4.4	1,253	26.2	5.4
17	1,240	28.3	5.1	1,400	29.2	6.0
18	343	7.8	1.4	374	7.8	1.6

* Contact with either court or panel, first or any subsequent appearance

Table 19

Age at first Appearance by Reappearance, Cohorts born 1962 & 1972, South Australia

Age at first appearance	*Number with at least one reappearance 1962*	*Percentage* 1962*	*Number with at least one reappearance 1972*	*Percentage* 1972*
10	70	65.4	74	63.8
11	79	45.7	137	54.4
12	140	44.0	202	47.6
13	252	35.7	290	40.4
14	275	32.6	327	36.1
15	268	32.3	303	36.2
16	136	23.4	217	29.8
17	99	14.6	137	19.5
18	9	8.3	8	7.7
Total	1,347	30.7	1,695	35.4

* Percentage of children who first appeared at that age

Conclusions

The study has been able to examine the cumulative appearance records of individual offenders in two cohorts of youth, whose age difference is ten

years. Appearance patterns within both cohorts were similar, however a greater proportion of the second cohort came into contact with juvenile justice because of panel rather than court appearances. The cumulative view of juvenile offending taken here enabled the analysis to distinguish between single and repeated appearances, a distinction of considerable interest in examining the offending patterns of different offender subgroups. Differences between male and female appearance rates are due mainly to the higher proportion of males having an appearance before a court or panel (males were two and one half times more likely to record an appearance). For males and females who did record an appearance, however, the mean number of appearances was less significant (male to female ratio of 1.5).

Court and panel appearances recorded in the database should not be interpreted as perfect indicators of offending behaviour. A chain of decisions leads to the final result of a court or panel appearance and this sequence of events may affect sub-groups of offenders in different ways. The type of decisions involved include: the reporting of an offence by a victim; the ability of police to detect an offender; and the decision by police, and willingness of victim, to designate the event as a crime and apprehend the offender. It is likely that the comparative involvement of Aboriginal offenders is particularly affected by this chain of decisions.

Black (1971) presented an analysis of the factors involved in police decisions to arrest in Boston, Chicago and Washington. There was no evidence in Black's study that police discriminated on the basis of race as such. Nevertheless, black Americans were arrested at a higher rate because blacks were more often disrespectful to police and disrespect was important in the decision to arrest for both blacks and whites. This result is likely to hold true for Aboriginal Australians although the database is limited in the insight it can add to this issue. Previous research using the Young Offenders database (Gale et al. 1990), has shown that Aboriginal youth by comparison with non-Aboriginals are more likely to be arrested than reported and that there is a cumulative process working within juvenile justice which leads to increasing representation. Aboriginals who appear are more likely to be referred to a court than a panel and are then more likely to experience detention rather than less severe sanctions. The issue of legal reaction to Aboriginal youth was also discussed by the Royal Commission into Aboriginal Deaths in Custody (1991, Volume 2, *National Report*, Ch. 14). The cumulative process described by Gale and others commences prior to the actual court or panel appearance.

Whatever mechanisms are involved it is clear that Aboriginal youth have an extraordinary level of contact with juvenile justice. The degree of Aboriginal involvement with juvenile justice lays a foundation for high rates of contact with adult courts and leads to more severe penalties because of an extended criminal record. An offending record will also have an impact on other life prospects such as employment.

This initial report has not dealt with regional variations in the prevalence of Aboriginal contact with juvenile justice, a matter which will be examined in later stages of the research. However prior research by Gale, Bailey-Harris and Wundersitz (1990, Ch 3), using the same database, found wide regional

variations in the rate of Aboriginal appearances—a variation which they attributed to differing levels of prejudice against local Aboriginal communities.

There has been much discussion of a so called "hard core" of juvenile offenders who are allegedly responsible for a large fraction of all juvenile offences. These initial results reveal that some juveniles are indeed held accountable for a disproportionate number of cleared offences. Nevertheless, the South Australian results do not reveal as high a concentration of offending as found in some other studies. For example the Philadelphia first cohort (Wolfgang et al. 1972) revealed that the most active 6 per cent of male offenders were linked to over one half of cleared offences. In both South Australian cohorts the most active 5 per cent of male offenders appeared in connection with one third of offences.

One must take care not to overestimate the proportion of offenders or appearances that are amenable to some intensive intervention. If some yet-to-be-designed intervention of superlative power is targeted at offenders making more than three appearances, it seems that at most 20 per cent of appearances would be affected, even if the intervention were perfectly successful! Thus, a focus on repeat offenders will not prove to be a panacea for juvenile offending. It is also true that repeat offenders tend to be those most resistant to intervention. There is, then, no justification from the results of this research for policies that focus narrowly on repeat offenders. There would seem to be at least as much success potential for programs designed to reduce the prevalence of recorded offending within an age group—a statistic that was greater for the 1972 cohort (21.1 per cent) than the 1962 cohort (18.1 per cent). These figures show an increase of 3 per cent for the whole cohort, or almost 17 per cent in the relative number of recorded offenders generated by the different cohorts. Approaches aimed at the whole cohort would direct us towards solutions focussing on education, employment, and a variety of community based initiatives.

The research has yet to analyse offence patterns but one should not assume that there is necessarily a concentration of serious offences amongst the offences committed by frequent offenders. Other longitudinal studies have produced conflicting results on the connection between seriousness and frequency. Finally one should recall that the results here are retrospective. They look back on a completed history of juvenile offending. At younger ages where juvenile offending patterns are still emerging, offences will be less concentrated in a small number of individuals. Prediction of high frequency offenders will not necessarily be easy. This point is emphasised by the results relating to age at first appearance. Over half of juvenile offenders make their first appearance at age fifteen or later and age seventeen is the most prevalent age for appearances regardless of whether the offending is by first timers or recidivists.

ACKNOWLEDGMENTS

I wish to acknowledge the contribution of several people towards the research on which this paper is based. First, I must acknowledge Julie Gardner, Senior Research Officer at the Office of Crime Statistics. Julie co-authored the report *Juvenile Justice I*, that presented the first results of the research. She also designed the database which re-formatted the data provided by the Department for Family and Community Services.

Particular thanks go to Dr Andrew Duguid and Joy Wundersitz of the Department for Family and Community Services (FACS). Andrew assisted our access to the FACS data and he and Joy engaged in valuable discussions with the researchers about the scope of the study and the interpretation of the data.

The Department for Family and Community Services granted access to the young offenders database through its research committee. The Department should also be congratulated on its foresight in establishing the young offenders database in 1972. This database now contains twenty years of young offender records which provide a rich source of information for research and policy development.

References

Australian Bureau of Statistics 1982, *Estimated resident population by sex and age: States and Territories of Australia, June 1971 to June 1981*, Catalogue no. 3201.0, Australian Bureau of Statistics, Canberra.

Australian Bureau of Statistics 1987, *Estimated resident population by sex and age: States and Territories of Australia, June 1981 to June 1987*, Catalogue no. 3201.0, Australian Bureau of Statistics, Canberra.

Black, D.J. 1971, "The social organization of arrest", *Stanford Law Review*, vol. 23, pp. 1087-111.

Donnell, A. & Lovell, R. 1982, *How many offend?: a descriptive account of levels of offending in a cohort of New Zealand boys*, Study of Social Adjustment Research Report No. 7, Young Offenders Unit, Department of Social Welfare, New Zealand.

Gale, F., Bailey-Harris, R. & Wundersitz, J. 1990, *Aboriginal Youth and the Criminal Justice System*, Cambridge University Press, Cambridge.

Lovell, R. & Norris, M. 1990, *One in Four*, Department of Justice, Wellington.

Morgan, F. & Gardner, J. 1992, *Juvenile Justice 1*, Attorney-General's Department, Adelaide.

Royal Commission into Aboriginal Deaths in Custody 1991, *National Report*, (Commissioner Elliott Johnston), vol. 2, Australian Government Publishing Service, Canberra.

Wolfgang, M., Figlio, R. & Sellin, T. 1972, *Delinquency in a Birth Cohort*, University of Chicago Press, Chicago.

YOUNG PEOPLE, COMMUNITY SPACE AND SOCIAL CONTROL

Rob White[1]

THE SOCIAL AND PHYSICAL CONSTRUCTION OF URBAN SPACE IS A CRUCIAL element in the manner in which policing and the criminalisation of young people occurs in Australian society. For it is the conflict over the use of particular urban spaces which in many ways forms the basis of the relationship between young people and the police, and hence the initial phases of the formal processes of the criminal justice system.

At one level it could be argued that it is the heavy-handedness of the police and/or the misbehaviour of young people, which is at the heart of "street crime" and the clashes that do occur on the street between these groups. The routine use of violence, harassment and threats by the police has been ably and convincingly documented (Alder 1991; White et al. 1991; Cunneen 1990a; Burdekin 1989); but so too has the chronic disrespect for the law and law officials on the part of many young people (Alder et al. 1992).

A focus exclusively on the immediate relationship between young people and the police would, however, beg the question of the wider structural contexts and parameters of the form and content of this relationship. Simply put, while it can be demonstrated at an empirical and descriptive level that young people and the police are each in their own right "at fault" when it comes to the tensions and conflicts at street level, this in itself is not sufficient to explain why and how these are occurring.

The recognition and acknowledgment of broad structural forces in the shaping of particular social relationships has important strategic and policy implications. For if the source of conflict is perceived or theorised as lying simply in the immediate antagonism between the "actors" (individual police officers and young persons), then any "remedial" action taken will tend to concentrate primarily or solely on reforming these "actors". In and of themselves, measures such as better training for the police or legal education for young people, while useful perhaps, are nevertheless limited. They will remain so to the extent that they are not linked to significant changes in the context within which police carry out their work and the uses which young people make of the streets (*see* Youth Justice Coalition 1990).

---

1. Thanks are due to Maxine Macdonald and Christina Kadmos for comments on an earlier draft of this paper.

The basic argument of this paper is that the social effects of depressed economic conditions, combined with the further intrusion of commercial relations into the sphere of general community spaces, invariably leads to conflict between the police and young people over the use of public spaces such as the streets and malls.

The profound economic polarisation in Australian society—as evidenced in high levels of youth unemployment, homelessness and poverty—is casting an increasing number of young people into extremely vulnerable situations (Australian Youth Policy and Action Coalition 1992). Individual young people, families and whole communities are progressively being structurally marginalised from the processes of production (for example, paid work), consumption (for example, income, goods and services) and community life (for example, politics, neighbourhood activities). Social alienation and disaffection with a social system which has not provided for their specific needs is one outcome of such economic trends. And the echoes of class situation are seen in random vandalism, "making trouble", survival crime and public displays of defiance and resistance to authority, including the recent student demonstrations (White 1989, 1990). Such are the social effects of the de-regulated economy.

So called "public" urban space is one site where the state in the form of the police and on behalf of particular business interests confronts the marginalised layers of the working class. The vulnerabilities of small businesses in particular, especially in a period of economic downturn, are such that any perceived or potential threat to trade is matched by ardent calls for state protection. The visibility of the dispossessed and the marginalised in the public spheres of the malls and shopping centres, the streets and the pedestrian strips, is manifestly "dangerous"—the shoplifter is also perceived to be a main culprit in creating the consumer *shopdrifter*. The demand to regulate the "riff raff" and the "rough" is in effect the demand to extend the regulation of public space. The re-definition and closing off of "public space" to the young is at one and the same time a transformation of public space into private space depending upon the activities, dress and behaviour of the people in these areas (*see* White 1992).

The Contested Terrain of Urban Space

The theme of this paper is that of "space" in the urban environment. It is argued that an aetiology or dissection of the nature of urban space is essential if we are to understand fully the dynamics of police-youth contact. This in turn has major implications for policy development, given that the criminalisation process often stems from or is associated with activity and relationships forged on the street.

Fundamentally, it is argued that many attempts to "reduce crime" or to "treat offenders" misconstrue the nature of the problem. It could well be argued, for instance, that unless significant socioeconomic changes take place (for example, in areas of income support, paid work and social welfare provision generally), there is little hope of significantly altering the extent and nature of current crime patterns (*see* Box 1987). Present objective

conditions relating to the overall allocation of community resources in Australian society provide the causal context and impetus for offensive behaviour of various kinds and of different degrees of seriousness.

Simultaneously, the particular manner in which social relationships in the public domain are socially constructed and "played out" also has a great effect on the processes of criminalisation. In other words, policy decisions and policing practices, particularly as these relate to the construction of community or public space, have a significant impact on how "offensive behaviour" is defined and on the nature of communal and group relations at the local level. So too, the physical structure and availability of shared communal space will likewise affect the nature of social interaction.

Uses and users of public spaces

The urban environment is divided into a wide range of private and public domains, often with distinct gender, class and ethnic differences in their use (*see* White 1990; McRobbie & Nava 1984). Those areas where young people congregate in the public sphere include places such as street footpaths, parks, ovals, roller skating rinks, school grounds, cafes, train stations, malls, shopping centres and public toilets. The keynote aspect of these places is that they are publicly accessible, even though, as with public toilets, they can represent a bounded domain of privacy and freedom from direct surveillance in the case of young women (Carrington 1989).

The particular venues where young people gather can be further distinguished in terms of their location in the overall metropolitan urban system. For instance, the venues and activities available in local neighbourhood areas (LNA) tend to vary from those in the central business district (CBD) of a city or local council area. So too, the type, extent and nature of policing in these areas has a different character insofar as LNAs incorporate multiple venues and sorts of activities, while CBDs tend to be restricted to purely commercial activity revolving around the sale of a good or service.

In addition, it needs to be emphasised that often LNAs have distinct class and ethnic compositions. The patterns of urban settlement into identifiable "neighbourhoods", with income and employment commonalities and visible cultural and physical similarities among the population group, is also associated with particular patterns of policing. This is especially evident in the case of economically and socially marginalised groups—for example Aboriginal people in the Sydney suburb of Redfern—where police practices have tended to be heavy-handed and at times brutal (*see* Cunneen 1990b). Indeed, it could be said that the nature of policing in any particular LNA is, in part, contingent upon the class and ethnic composition of the residents. This is concretely borne out, for example, in studies of policing with respect to Aboriginal communities and places where Aboriginal people congregate en masse (*see* Cunneen 1988, 1989, 1990a, 1990b; Cunneen & Robb 1987; Royal Commission into Aboriginal Deaths in Custody 1991; Moss & Castan 1991; Gale et al. 1990).

The concern of this paper, however, is more with the type of policing which occurs in the CBDs. A CBD includes those areas located in the heart of a metropolitan system (such as Hay Street Mall in Perth or Bourke Street in Melbourne) and areas of significant commercial size in outer towns or suburban areas (Mirrabooka in Perth Metropolitan area as one example). The significant factor relating to such areas is that they tend to be multi-class and poly-ethnic in nature. That is, people from all parts of the city or urban region tend to travel to or through such areas on a regular basis. They are true meeting grounds for all types of people, with different social and economic backgrounds.

While it could be argued that policing in LNAs involves varying degrees of accommodation (and resistance) between the local community and the police in defining the particular criteria to be used in constructing "appropriate" methods of policing for that area (*see* Cohen 1979), the same cannot be said with regard to CBDs. The heterogeneity, transient nature and commercial focus of CBDs means that specific policing objectives (tied to the overarching function of such centres—that is business activity) are dependent upon the application of universalistic norms and obligations.

To clarify what this means in practice, it is necessary to briefly identify different usages and different users of "public spaces" in the CBDs. The overriding functional imperative of CBDs is to facilitate (legal) commercial transactions. Part of the means by which to do this includes the establishment of various "honey pot" inducements to bring people into the commercial arena. These take the form of such attractions as fast food outlets, video retail shops, cinema entertainment complexes, restaurants and pubs, leisure and recreation centres, as well as the usual advertising and product displays which characterise shopping areas. Public transportation and road systems are also designed to either facilitate access to the CBD or to make it an unavoidable stopover point in intra-city travel. The net result of this is large congregations of people and the attractions of bright lights and varied activities concentrated in relatively small areas of the city.

The users of such spaces vary in terms of why they are there and what they do with their time. Certainly the majority of people using CBD areas are there for the purposes of paid work (office or service work), as part of a population commuting from one part of the city to another, and/or as buyers of goods and services. Commuting, producing and consuming are all seen as legitimate activities in the CBD. Public space in this instance is predominantly defined as "commercial space". For financially and culturally the CBD is the commercial heartland of particular urban systems, and anything which pertains to this is of course treated favourably.

But the CBD is a centre for alternative non-legitimate activities as well. For example, the CBD is a pole of attraction for the homeless and destitute. Public parks and public walkways can thus be transformed into "welfare" spaces—as temporary receptacles for the urban down and out—and charity bins transformed into "home". Refuge is sought here because behind the businesses and shops are boxes for shelter and places to stretch out; and in most cases the "day workers" leave the area before dark. The streets and venues of the city are also the sites of serious criminal activity (for example

robbery), crimes against property (for example shoplifting) and illegal economic activity (for example fencing of stolen property). Finally, it is the place where people can get together to spend their time (if not their money) among peers and friends, in an atmosphere of relative anonymity and excitement of the senses.

For young people, the movement from LNA to CBD can be motivated by or stem from a number of factors. In addition to the "pull" factors mentioned above (relating to the evident attractions of a city centre), there may be several "push" elements shaping the movements of young people. These include, for example, such factors as few local leisure or recreational services in a LNA, the impact of over-policing on street life, financial and other tensions in the family home, and sheer boredom with one's own neighbourhood communities.

If we assume for the moment that CBDs do have great attraction for young people, then the question of what young people actually do in these areas becomes of prime importance. For the CBD is socially constructed first and foremost as a "commercial space"—not as a space for non-commercial activity. The young consumer does have a place here and will indeed be very welcome by businesses of all kinds, including those which offer youth-specific goods and services. The problem lies in those young people who do not or cannot consume what the commercial enterprise has to offer.

Here it can be suggested that the rapid growth in and high visibility of young people who have been marginalised economically and socially has and will continue to have a significant impact on social relationships within the CBDs, and thus the police.

While it could be said that the poor and the homeless "have always been with us", as documented in various welfare histories (Dickey 1987; Garton 1990), the scope of the problem certainly has not been of such grave proportions over recent times, at least since the Great Depression of the 1930s. This has a number of ramifications and implications at the level of street relationships and the use of "public space".

One of the defining characteristics of the post-war period with regard to young people was the rise of the "young consumer" and of a myriad of cultural trappings associated with this (in areas such as music for example). The expansion of a mass "youth culture" was in essence linked to the purchasing power of children whose parents were experiencing the fruits of the long economic boom. This situation has of course now been transformed greatly.

The dilemmas and problems experienced by an ever increasing number of young people in Australian society are demonstrated in figures across a range of key social indicators: a real growth in the number of children living in poverty (Australian Council of Social Services 1992); a majority of full-time workers under the age of twenty-one being in the lowest quarter of income recipients (McDonald 1991); a dramatic decline in the value of youth wages relative to adult wages (Australian Council of Trade Unions 1989); youth unemployment rates fluctuating between 25 and 36 per cent in 1991-92 (Pisarski 1991; Australian Youth Policy and Action Coalition 1992); unemployment benefits and allowances consistently being paid at well below

the poverty line (Sheen & Trethewey 1991); large numbers of homeless children (Burdekin 1989); and the list could go on.

The vast numbers of young people who are no longer in a position to consume in the manner of previous eras poses a series of problems within the context of the CBD economic and political framework. First, it is not always easy to distinguish the marginalised from those who are not, at the level of appearance alone, given the nature of youth fads, fashion and subcultural styles. Second, the fact that so many young people are economically destitute carries with it the additional threat of petty crime and efforts on the part of the young homeless in particular to survive via any means possible, legal or illegal. Third, an extended period of recession has made it even more important for businesses to successfully compete with other businesses for the shrinking consumer dollar. Any person or group which gets in the way of commercial transaction or impedes the exploitation of a potential market is immediately deemed to be an enemy to be eradicated or displaced as soon as possible. Significantly, it has been estimated that shoplifting constitutes half of the total direct costs for juvenile offending (Potas et al. 1990).

Together these facets of the present situation constitute a strong inducement for businesses to put pressure on the police to make sure that any potential trouble by young people be ameliorated beforehand. It also means that all young people have effectively become targets for state intervention due to the widespread nature of the marginalisation processes in society.

In stark terms, the crux of the issue is encapsulated in one of two possible alternatives within the existing economic framework:

- Young people in general are provided with significant boosts in income. This would involve major improvements in social security payments, at the least to over the poverty line. It would also involve considerable increases in youth wages (or training wages and allowances) to much higher levels. With increases in the spending power of the student, the unemployed and the working poor, young people would once again occupy commercial space in the appropriate manner.

- Young people in general are excluded from the use of commercial space and/or are subject to heavy surveillance and regulation of their activities. This would have the consequence of defining and reinforcing their worth as human beings simply in commercial terms; it also sets in train a backlash effect from the young people themselves, based in part upon their continued use of public space as community space.

Unfortunately, it is the second of these options which has prevailed in the current fiscal climate. And this in turn is manifest in the ways in which young people' presence and activities in the CBDs are currently being managed.

Protection and regulation of public space

The recent National Youth Affairs Research Scheme report on *Perceptions of the Treatment of Juveniles in the Legal System* found that young people from a wide range of economic and social backgrounds, and of both sexes, had had interactions with the police (Alder et al. 1992). The report found that of the young people interviewed (in Tasmania, Queensland, Victoria and Western Australia), 80 per cent had been stopped by the police, and of these all but 17 per cent had been stopped on the street (Alder et al. 1992, p. 21). The study also asked police officers where they thought young people were of particular concern. The most frequently specified places were malls (53 per cent of police officers) and shopping centres (60 per cent of police officers). In other words, it was clear from the findings that the police basically concentrate on monitoring the activities of young people where they are especially visible to the general consuming public (Alder et al. 1992, p. 31).

The protection of urban spaces of this sort demands the imposition of a narrow, specified definition of public space, one which clearly centres on the commercial dimensions of its use. While diverse communities may enter into these kinds of public spaces for many different reasons and uses, any sharing of the space—venues, facilities, open areas—is not permitted beyond the parameters set by the dictates of the consumer prescription.

Under such circumstances police activity is guided by universalistic rules of public behaviour centring on very specific types of activity. Public behaviour is thus evaluated in relation to economic activity. People occupying these spaces are considered in relation to whether or not they are legitimate or illegitimate possessors of property, and whether or not they are undertaking legitimate or illegitimate activity in this social context (*see* Cohen 1979). The transient nature of the population, coupled with the multiple class and ethnic backgrounds they possess, do not allow for ready negotiation of the "groundrules" by which police-youth interaction is to take place. Just as importantly, the heterogeneity of community users of the CBD, the visibility of public interactions, and the varying purposes and lengths of time people are in these areas, mitigate against any kind of perceived positive special treatment on the part of the police.

The work of the police is in essence designed to protect property, and to protect commercial activity and commercial investments. In the first instance, foot patrols and electric golf carts provide manifest evidence of police concerns to prevent theft or vandalism in the commercial district, and to respond quickly to any personal attacks on patrons and passers-by which may occur in these areas. Secondly, the police facilitate the flow of commercial transactions by offering tangible deterrents to potential offenders (as in the case of shoplifters) and add an element of coercive insurance to the carrying out of normal enterprise. In its own right, neither of these functions is especially problematic. However, when linked to particular kinds of policing perspectives and police practices, problems do arise.

In summary form, we can refer to three contradictory features of the police role in the urban environment:

- in enforcing the law in defence of private property the police must be vigilant against any potential or actual threat to the owner. Given the low incomes available to a significant number of young people (via paid work or state welfare), the threat of widespread offending activity as part of the criminal economy and of increasing instances of survival crime, is both real and immediate.

- in attempting to facilitate the normal operation of commercial enterprise the police are called upon to protect all aspects of the consumption process. Again, where large numbers of young people are no longer in a position to buy goods or services, but have a need to partake of activity in the public domain, the police are faced with dilemmas relating to the presence of the marginalised in areas where they are seen as a threat to the ordinary consumer.

- the police are also made responsible for the general social welfare of those people needing assistance in the commercial city areas. The visibility of the young homeless, issues of exploitation and prostitution, and obviously distressful living situations put pressure on the police to actively intervene—forcibly if necessary—in order to save the children of the streets (through moving them on or referring them to social welfare workers). This phenomenon is also related to the position of the young people in paid work, as welfare beneficiaries and as consumers.

The struggle over territory between police and young people is by no means a new phenomenon. Indeed, it features throughout Australian history, from the days of the larrikins and pushes through to those of the bodgies and widgies (Grabosky 1977; Stratton 1992). But the character of the contact between the police and young people at any point in time is crucial to consider if we are to understand fully the possibilities for reform or change.

Today, for example, the widespread disenchantment with the police on the part of young people is due in part to the frequency and nature of police intervention in their lives. It needs to be repeated and stressed here that, while particular groups of young people (for example Aboriginal young people, street kids) are especially prone to experience police harassment, over 80 per cent of a wide cross-section of young people who were recently interviewed said that they had been stopped and spoken to by the police at some time, with 50 per cent having been taken to a police station (Alder et al. 1992). This shows an extraordinary degree of police intervention in young people' activities.

This is partly due to policy measures at the state level designed to clean up the streets. As well, there are local government concerns with security and the adoption of measures designed to enhance the business environment. The role of local government in the criminalisation process is in fact one area where more research and discussion needs to occur (*see* Palmer 1991). A thorough analysis of the functions and politics of local government could, for example, look at the role of developers and retailers in narrowing the extent

of public space openly available, in enticing people into spaces defined as consumer space, and in rejecting those who cannot afford the costs of entry and use.

Parenthetically, we might also mention another area of concern which has implications for the use of public walkways and malls; namely, the use of publicly owned institutions such as schools. These places do not require the cost of an entry ticket and thus are commercially "free". However, school grounds are policed heavily out of school hours, partly due to the real threats of vandalism and arson. The policing of public spaces such as schoolyards and sports ovals alerts us to the fact that it is not only private commercial space which has been closed off or which is highly regulated with respect to young people.

With regard to the CBD, it could well be argued that measures adopted to "prevent crime" and "assist the unfortunate" can lead to a criminalisation of all young people -at the least in terms of suspicion and intervention—even if this is not explicitly recognised in the terms of the policy or strategy. The "City Safe" approach adopted in Perth in 1989 was clearly targeted at monitoring the activity of a minority of young people—yet the ideological connotations and practical implementation of the program negatively reflected upon all young people present in the inner city area.

It is useful to briefly outline the objectives of the program as a means to illustrate how and why this is the case (City of Perth 1989). The "City Safe" approach involves several different strategies:

> Developed within a Community Policing framework, the strategies include the prevention of crime through control measures, rapid response mechanisms to avert potential criminal or unsafe situations, and improved access to support services, especially for young people.

While the planners comment that "There is a careful balance between prevention, active help and support, and control measures", the main thrust of the program is obviously with public order and control priorities, within the context of which welfare measures are to play a subsidiary and complementary role.

> The City of Perth and the Police Department have for some time, been concerned at the growing rate of crime and anti-social behaviour occurring within the central city area. The cost in having to respond to these along with the loss of potential patronage of central city businesses and services, is considered a significant problem. CITY SAFE is expected to reduce criminal activity and attract greater patronage of business and services.
>
> The central city area attracts many sections of the community including families, shoppers, tourists, rural visitors and young people, all seeking different things. CITY SAFE aims to ensure that the needs of these visitors can be met as effectively as possible. CITY SAFE will assist by providing pathways to information, referral and support services.

To achieve these ends, the most controversial aspect of the "City Safe" program involved the setting up of a closed circuit television system providing 24-hour surveillance of key public areas within the central city area. Politically, the program legitimated the widespread intervention of police in these areas, centring predominantly on the activities of young people. The policy has been accompanied by novel uses of technology (for example, spy cameras, golf buggies) and the normalisation of "move on" powers and "name checking" as part of the police routine.

While instances of mistreatment and harassment tend to congeal around particular populations of young people (for example, Aboriginal people, street kids, gangs), the differential treatment of these young people is set within the context of universal suspicion and wariness of youth in general. This is not unique to Western Australia. For example, during the Christmas holidays in 1991 the Queensland police instigated operation "Youth Watch". The campaign was based on the incorrect assumption that young people (especially young men) were responsible for 80 per cent of property crime (*see* Alder et al. 1992, p. 51). The suspicion of young people has been accentuated by the economic recession and the extraordinary burdens which young people have been forced to carry with regard to poverty, low wages and unemployment.

Furthermore, the resentment, fear and apprehension of many young people is generated not only by the existing level of intervention by the police in their lives, but by the actions of the police in relation to specific groups of their peers. What happens on the street, and what happens to particular young persons, is not a matter confined to the immediate protagonists—it permeates the wider youth population in the form of stories, myths, legends and tales. Instances of police bashings or particularly nasty run-ins with the forces of authority will be relayed far beyond the immediate vicinity or youth group involved in a particular incident. Personal experience is not a necessary requirement for one to feel the repressive impact of police powers.

The rationale behind policing, the targets for policing and the techniques of policing are thus crucial factors in the frictions and tensions between young people and the police. But all of these are, in turn, shaped by the relationship between the state, business interests and the economic contingencies of youth.

Conclusion

Discussions of crime reduction and treatment of offenders too often ignore the deep structure of the problem of juvenile crime: namely, rampant youth unemployment, poverty, and inequality. This is first and foremost at the heart of the issues and should under no circumstances be treated lightly or simply relegated to the status of conceptual backdrop. Putting such concerns into the "too hard" basket in effect postpones the crucial issues of necessary societal reform and re-consideration of political priorities. It also tends to push people in the direction of short-term and medium-term "solutions" which, ultimately, do not address the real determinant factors behind youth offending or the substantive role of official social reaction in shaping the criminalisation

process. It also raises the question of whether juvenile crime prevention policy is seeking genuinely to change the existing situation or merely trying to control it.

Certainly the increased regulation, monitoring, surveillance and regimentation of "public space" is not going to solve the problem of either "street crime" (namely youth crime) or of negative police-youth relationships (linked to lack of "consumer" status on the part of some young people). Politically, the expanded use of public order offences by local and state governments as a means to control street life will exacerbate the tensions and conflicts already evident in most urban centres. Similarly, attempts to squeeze young people out of formerly "public spaces" by redefining this space according to commercial, consumerist criteria directly challenges the needs and desires of young people to assert their autonomy and to congregate with their peers in places outside of close adult or state control.

The constriction of social space for these young people, plus the pressures on the police to protect the public and the business community, is premised upon an attempt to limit the visibility of young people in groups or gangs and to displace the more overt effects of the current economic crisis. The net result of this, however, is to present young marginalised people as the enemy. These layers of the working class are thus transformed into the "dangerous classes" of the late twentieth century. The content of official prescriptions regarding appropriate behaviour, respectability and legitimate activity—and how these have changed—is yet another area which warrants further consideration if we are to appreciate the full impact of the demise of the "youth as consumer" in the post-1970s period (*see* White 1992).

While the police try to come to grips with community policing in its different manifestations, they are necessarily caught up in the contradictions generated by class inequality, social oppression and deep poverty. It is their role to be the boundary police of the class structure, to enact whatever form of control is deemed to be the most effective in maintaining a semblance of social peace and commercial viability. But diverse activities designed so that the police can be both part of the community whilst policing that same community are inherently contradictory. The techniques of policing (for example, the use or threat of force, name checks, harassment, move on powers, uniformed street presence) coupled with the orientation of street policing (for example, clearing the streets, ensuring the comfort of consumers, fostering commercial activity) means that the relationship between the police and young people will be an uneasy one at best.

While not wanting to sound overly pessimistic about the possibilities of reform and constructive crime prevention, my own view and that of others is that the overseas experiences of urban unrest and riot will be repeated here in the not so distant future. For without income and space of their own, without social respect and personal self-esteem, young people have nothing to lose in rebelling in whatever fashion or manner they may choose against a system which for all intents and purposes has forsaken them.

References

Alder, C. 1991, "Victims of Violence: The case of homeless youth", *Australian and New Zealand Journal of Criminology*, vol. 24, no. 1, pp. 1-14.

Alder, C., O'Connor, I., Warner, K. & White, R. 1992, *Perceptions of the Treatment of Juveniles in the Legal System*, National Youth Affairs Research Scheme, Canberra.

Australian Council of Social Services 1992, "A day of action on unemployment", special insert, *Social Welfare Impact*, vol. 22, no. 4, May, pp. 1-8.

Australian Council of Trade Unions, 1989, *Youth Strategy*, ACTU, Melbourne.

Australian Youth Policy and Action Coalition 1992, A Living Income: Income support for young people (plus assorted media releases and information packages), Youth Action and Policy Association (NSW), Sydney.

Box, S. 1987, Recession, Crime and Punishment, Macmillan Education, London.

Burdekin, B. 1989, *Our Homeless Children: Report of the National Inquiry into Homeless Children by the Human Rights and Equal Opportunity Commission*, Australian Government Publishing Service, Canberra.

Carrington, K. 1989, "Girls and Graffiti", *Cultural Studies*, vol. 3, no. 1, pp. 89-100.

City of Perth 1989, CITY SAFE (information package for official opening of program, 12 October), Perth.

Cohen, P. 1979, "Policing the Working-Class City", in *Capitalism and the Rule of Law*, eds B. Fine, R. Kinsey, J. Lea, S. Picciotto & J. Young, Hutchinson, London.

Cunneen, C. 1988, "The policing of public order: some thoughts on culture, space and political economy", in eds M. Findlay, & R. Hogg, *Understanding Crime and Criminal Justice*, Law Book Company, Sydney.

---------- 1989, "Constructing a Law and Order Agenda: Conservative populism and Aboriginal people in North West New South Wales", *Aboriginal Law Bulletin*, vol. 38, no. 2, pp. 18-20.

---------- 1990a, *A Study of Aboriginal Juveniles and Police Violence*, Human Rights and Equal Opportunities Commission, Sydney.

---------- 1990b, *Aborginal-Police Relations in Redfern: With special reference to the "police raid" of 8 February 1990*, Human Rights and Equal Opportunity Commission, Sydney.

Cunneen, C. & Robb, T. 1987, *Criminal Justice in North-East New South Wale*s, Bureau of Crime Statistics and Research, Sydney.

Dickey, B. 1987, *No Charity There: A Short History of Social Welfare in Australia*, Allen and Unwin, Sydney.

Gale, F., Bailey-Harris, R. & Wundersitz, J. 1990, *Aboriginal Youth and the Criminal Justice System: The Injustice of Justice?*, Cambridge University Press, Melbourne.

Garton, S. 1990, *Out of Luck: Poor Australians and Social Welfare 1788-1988*, Allen and Unwin, Sydney.

Grabosky, P. 1977, *Sydney in Ferment: Crime, dissent and official reaction 1788 to 1973*, Australian National University Press, Canberra.

McDonald, P. 1991, "Youth wages and poverty", *Family Matters*, no. 28, pp. 38-41.

McRobbie, A. & Nava, M. (eds) 1984, *Gender and Generation*, Hutchinson, London.

Moss, I. & Castan, R. 1991, *Racist Violence: Report of the national inquiry into racist violence in Australia* (Human Rights and Equal Opportunity Commission), Australian Government Publishing Service, Canberra.

Palmer, D. 1991, "Local Government and Policing Public Space", *Socio-Legal Bulletin*, no. 5, pp. 18-19.

Pisarski, A. 1991, "Statistics Disguise Apathy Shown Towards Youth Unemployment", *Social Welfare Impact*, vol. 21, no. 11, pp. 18-19.

Potas, I., Vining, A. & Wilson, P. 1990, *Young People and Crime: Costs and Prevention*, Australian Institute of Criminology, Canberra.

Royal Commission into Aboriginal Deaths in Custody 1991, *National Report* (vols. 1-5), (Commissioner E. Johnston), Australian Government Publishing Service, Canberra.

Sheen, V. & Trethewey, J. 1991, *Unemployment in the Recession: Policies for Reform*, Brotherhood of St. Laurence, Melbourne.

Stratton, J. 1992, *The Young Ones: Working-class Culture, Consumption and the Category of Youth*, Black Swan Press, Perth.

White, R. 1989, "Making ends meet: young people, work and the criminal economy", *Australian and New Zealand Journal of Criminology*, vol. 22, no. 2, pp. 136-50.

White, R. 1990, *No Space Of Their Own: Young people and social control in Australia*, Cambridge University Press, Melbourne.

---------- 1992, "Young people and the policing of community space", paper presented at the Conference of the Australian and New Zealand Society of Criminology, Melbourne, September-October.

White, R., Underwood, R. & Omelczuk, S. 1991, "Victims of Violence: The view from the youth services", *Australian and New Zealand Journal of Criminology*, vol. 24, no. 1, pp. 25-39.

Youth Justice Coalition 1990, *Kids in Justice: A blueprint for the 90s*, Youth Justice Coalition, Sydney.

FACING THE CONSEQUENCES[1]

David Moore[2]

AS IN OTHER FIELDS OF POLITICS, MAJOR CHANGES IN THE JUSTICE SYSTEM tend to occur when there is not only a practical need and political support for change but also a theory or philosophy with which to justify new practices. The search for alternatives to the court system for dealing with young offenders is a good example. Practitioners and observers of the system for dealing with young offenders tend to talk of two basic models. The "justice" model has tended to see juvenile delinquency as a psychological problem whereby young offenders have exercised their free will inappropriately. The "welfare" model has tended to see the behaviour of young offenders as a sociological problem. Each swing of the policy pendulum between the "welfare" and "justice" models has been justified by theories of child psychology and beliefs about the deterrent effect of various treatments.

A concern that young offenders were being labelled as criminals and thereby stigmatised encouraged the search for less formal procedures during the 1960s and 1970s. Concern that informal procedures potentially deprived young offenders of the right to due process subsequently encouraged the trend back towards a justice model. In the language of our debased political vocabulary, this oscillation between the welfare and justice models of dealing with young offenders has been seen to reflect a struggle between "liberal" or "leftist" values on the one hand and "conservative", "right-wing" or "authoritarian" values on the other.

It is becoming clear, however, that this political language is no longer adequate. It encourages thinking—and politicking—that is confused rather than enlightened. The liberal democratic philosophy within which this debate takes place is an invaluable tradition. It tends, however, to emphasise individual rights at the expense of social obligations or duties. It draws a sharp distinction between public life and the private sphere. The legal system formally reflects this philosophy, and in recent debates about the legal justice

---

1. This paper has been substantially edited for this volume. Copies of the original may be obtained from the author.

2. For their advice and assistance, thanks are due to: Ross Chambers. Barbara Howard, Suzanne Huggett (CSU-Riverina), Terry O'Connell (NSW Police Service, Wagga Wagga District Patrol) and Moyra Shields (Radio 2WG News Department).

system the inadequacies of rights-based liberalism have become perhaps most apparent. It is no coincidence that "community" has been the keyword in these debates and policies. All parties claim to be representing, speaking on behalf of, or embedded in, the community. Government initiatives are now routinely sold as community programs. And the most political of all government agencies, the police department, is now "policing by consent" and is "community based".

Recognition of the inadequacy of a philosophical language that talks of abstract relations between individuals and the state tends to overlook the real relations between individuals within their various communities of shared interest—the family, the school, the workplace or voluntary and recreational organisations. After years of being told by social theory that communities began to disappear with the spread of industrialisation, we now find the term community replacing "democracy" as the codeword for all that is good in politics. While anything bearing the community label should, therefore, be handled with scepticism, the strong appeal of the cluster of meanings attached to the word is obviously politically significant.

This is certainly true within the justice system. For instance, when police officers are charged with implementing community policing programs, their choice of language to describe new programs is important. Thus, when the Wagga Wagga Patrol in southern New South Wales introduced an integrated crime prevention program during 1991, the word community was used effectively but sparingly. Official liaison between police and other agencies was conducted through a Community Consultative Committee. Changes to police patrol, however, were introduced under the title "Beat Policing". A new scheme to deal with young offenders was called simply "the juvenile cautioning process". Despite the modest title which lacks reference to the community, however, this cautioning scheme is at the heart of the new crime prevention program in Wagga. Furthermore, it is based on a political and social theory that ascribes significant meaning to the word community.

The Wagga Wagga Cautioning Scheme

The basic design of the scheme is simple. The formal caution takes place in the context of a family group conference following the well-known New Zealand model. In contrast to the New Zealand model, however, the cautioning process in Wagga is coordinated by a police sergeant at the local police station, rather than by a welfare worker at the offender's home. The police station is a setting that favours neither victim nor offender. It also lends a certain gravity to the proceedings. The sergeant acts as intermediary in a discussion of the incident in question between victim and offender, both of whom are accompanied by significant supporters. These supporters are usually, but not necessarily, family members. The focus is on an offence that has left a victim feeling insulted and demeaned. The offence can also be seen as an offence against the state or society in so far as it has breached the trust which holds together any social collectivity. Nevertheless, the most direct damage has been done to the immediate victim of the crime and that victim has the highest stake in negotiating a settlement.

During its first year of operation the process seems to have been remarkably successful in achieving restitution in cases involving material loss or damage. In many cases, however, victims consider it far more important to achieve symbolic reparation for the emotional damage caused by an offence (Wright 1991, p. 113). The level of victim satisfaction with the scheme would suggest that there has been considerable success in achieving this symbolic reparation. Furthermore, the police coordinating the cautioning process are confident that it is not only successful in achieving both material restitution and symbolic reparation for victims but that it also encourages young offenders to take responsibility for their own lives rather than seeing themselves as the passive victims of their own circumstances, as difficult as these may be. It encourages offenders to develop empathy for other people. Victims often reciprocate by showing empathy for young offenders.

The family group conference can thus be seen as a ritual which allows emotions back into the justice system. Shame, anger and aggression are not denied. Rather, the acknowledgment of a sense of shame felt by all parties to the dispute is the first step towards restoring both individual self-respect and collective social bonds. A clear distinction is made at the start of each conference between an unacceptable act and the person who committed that act. Having acknowledged feelings of shame for the offence, young offenders are given a chance to be reintegrated into their immediate community of interest and into the broader community of people to whom their actions were unacceptable. Since the process is designed to locate the causes of crime at several levels, not just within the person of the offender, the cautioning process avoids the stigmatisation of young people through labelling them as bad or rotten (Murphy & Hampton 1988, ch. 2; Braithwaite 1989; Scheff & Retzinger 1991).

The cautioning process in Wagga is based on a theory of politics and justice that cannot be easily located on a spectrum between the soft "leftist", "welfare" model of dealing with young offenders and the alternative hard model of just deserts for all who have broken the law. These two models share one essential characteristic. In a well-known argument of Nils Christie, they both represent a "theft of the conflict" from victims and offenders (Christie 1982). The juvenile cautioning scheme developed by police in Wagga Wagga attempts to give that conflict back to those directly affected by it. The scheme thus represents a paradigm of conflict between social individuals, a conflict that is mediated by the state. This is an alternative to the prevailing paradigm of conflict between an isolated individual on the one hand and, on the other, the state against which they are seen to have offended (Zehr 1990). The basic rules governing the mediated conflict between individuals are those of social justice and reciprocity or "common decency", rather than the less familiar rules of legal justice.

The scheme is currently confined to juvenile offenders and the scheme's designers would not necessarily advocate that it be expanded to accommodate adult offenders. Its significance, however, is somewhat broader than the title "juvenile cautioning process" might suggest. If it is indeed more effective than existing programs for dealing with young offenders, it offers several benefits. It offers, firstly, to reduce the incidence of minor juvenile

crime and the "incivility" that is considered to contribute to a general fear of crime. Secondly, it may offer some young offenders an early opportunity to break the spiral from minor infringements to more serious crime. Thus, although dealing directly with juveniles, the scheme offers a chance to reduce over time the number of young men between the ages of eighteen and thirty who parade before the lower criminal courts.

Thirdly, the scheme offers both victims and other people affected by a crime the chance to participate in a process designed to heal some of the damage caused by that crime. In doing so it offers, fourthly, a practical means by which to strengthen local communities. It thus offers a challenge to the prevailing legal paradigm of retribution and a challenge to the prevailing political paradigm of utilitarian individualism. It aims to minimise social harm rather than to maximise individual punishment; it seeks to achieve the best outcome not only for individuals but also for communities.

The cautioning process has received considerable support both from those directly involved and from interested observers. Supporters of the program must, however, give serious consideration to criticism of this sort of alternative to the court system. Legitimate concerns have been raised by three main groups: by proponents of other "informal" means of dispute resolution, by critics of any informalism in criminal justice and by critics of communitarian or republican political theories.

Are other Models of Informalism preferable?

Existing alternatives to the court system for dealing with young offenders fall into two basic categories: police cautions and community panels. The Commissioner's orders and statutory provisions for these various schemes vary from State to State. While they may differ in detail, their basic concern is the same. They deal with young offenders. There is little they can offer victims or communities. All of these schemes share a common aim of diverting children from the court system. In most cases they also seek to bring about some improvement in the attitude of the young offender. They do this by a combination of threat and suasion. The primary source of the problem, in other words, is located in the personality of the young offender. Professionals seek to save or "govern" the offender's soul (Rose 1990). The young offender is their client and their chief concern.

From the point of view of the young offender, the processes of being cautioned by a stern sergeant or counselled by an understanding panel are essentially the same. The voices of officialdom point to personal failings that need to be rectified. Proponents of both the traditional sergeant's caution and community aid panels thus identify a lack of self-control as the ultimate cause of juvenile offending. Travis Hirschi, recently proposed a "General Theory of Crime" with a very similar central premise. Resurrecting a classical rational choice model of criminality, Hirschi sees low self-control as the ultimate cause of crime. (Gottfredson & Hirschi 1990).

The juvenile cautioning scheme in Wagga is based on fundamentally different premises. By assembling together not only the victim and the offender but also the people closest to them, the family group conference

expresses symbolically the belief that crimes are not committed simply as a result of low self-control on the part of the perpetrator. Rather, they occur in the context of failed control by families and other intimate communities. This is not to suggest that young offenders are simply the passive victims of their circumstances. A theory of low individual self-control, however, does not explain much and focuses on psychological factors at the expense of social context.

In the theory on which the Wagga cautioning scheme is based, an apparent lack of self-control on the part of young offenders is not seen as the cause of criminality. Rather it is a symptom of a deeper problem shared by anybody who mistreats another person—regardless of whether or not that mistreatment is deemed criminal. The problem common to offenders is a difficulty, an unwillingness or an inability to empathise with other people. This is, by definition, both an individual and a social problem. Individual offenders fail to consider the personal and social ramifications of their actions. Their incivility can only be addressed effectively in a social context. The family group conference aims to create that context. In doing so, it offers not only an alternative setting to the courtroom, but an alternative paradigm of social justice.

The sergeant's caution and the community aid panel, in contrast, remain within the traditional paradigm of criminal justice. Magistrates, welfare workers or police—exercising the discretion vested in their office—deal with young offenders in the manner considered appropriate by the agencies for which they work. Two aspects of these traditional processes, however, are probably more likely to promote than to reduce crime. Firstly, in the absence of mechanisms to acknowledge adequately their emotions, offenders are encouraged to suppress their shame and anger. These emotions may later re-emerge as the sort of rage that produces violent crime (Katz 1988). Secondly, and perhaps more importantly, when lectures are delivered by the voices of officialdom it becomes all too easy for young offenders to forget the victims of the offence that brought them into the criminal justice net. Indeed, the paradigm within which state officials deal with individual offenders can actually encourage those offenders to recast themselves as victims. Whether impartial magistrates are meting out just deserts or whether understanding youth workers are providing personal counselling, the fundamental process by which this further victimisation occurs is the same. Officials are stepping in to offer some form of state control in cases where community control is seen to have failed. However, this new, more visible form of control is unable to deal with two problems that encouraged or made possible the initial offence. The system of state control cannot successfully acknowledge the offender's emotions of shame and anger. Secondly, it cannot successfully encourage the offender to feel empathy for the victim of the offence and for potential future victims.

The traditional paradigm, in failing to deal with the problem of unacknowledged emotions and with the problem of a lack of empathy, can then create this new problem, the problem of offenders seeing themselves as victims of the system. The process takes one offender and one direct victim. It ends with that same direct victim—usually without material restitution,

certainly without symbolic reparation. In place of the direct offender, however, we have an indirect victim. One victim and one offender have become two victims when the rational aim should surely be to produce two reconciled and socially reintegrated citizens.

Arguments such as these have led in the past to radical calls for abolition of the entire criminal justice system (Cohen 1988; de Haan 1990; Stenson & Cowell 1991). The extreme libertarian model—irrespective of whether its proponents are waving red or black flags—suggests that it is better to have no control than to have an excess of unavoidably punitive state control. Communitarian theory, which has influenced the juvenile cautioning scheme in Wagga, sees libertarian arguments of this sort as unrealistic, irresponsible or just meaningless. The preferable alternative to state control is not a complete absence of control but, rather, positive social or community control. According to this model the development of mechanisms to strengthen community cohesion is considered an important political goal.

The family group conference is considered to be the most effective way to identify the causes of failure in family and community control and to begin the complex process of restoring social bonds. The people most directly affected by social disintegration can, with some guidance if necessary, heal these bonds. They are the only people who can do so both effectively and permanently.

Unfortunately, some of the institutional arrangements in the criminal justice system may be at odds with these goals. Existing alternatives to the court system for young offenders, for instance, do not necessarily encourage the strengthening of social bonds. They may not harm the young offender but they may lack a theoretical explanation of how they might do much good. Fortunately, by most estimates, around three quarters of first offenders do not reoffend. The problem of the victim remains, however. Traditional informal methods may achieve material restitution for victims after an offender is cautioned. They are not designed to repair the more significant symbolic and emotional damage. Nevertheless, proponents of other informal methods of dealing with young offenders have raised some important specific concerns about the model of mediated conflict. Some of these criticisms apply to a range of schemes. Others have been directed specifically at the new scheme in Wagga. Predominantly these criticisms are that:

- the family group conference scheme has a "net-widening" effect, drawing young offenders into the criminal justice system when their offence was too trivial to warrant any official intervention (Howard & Purches 1992).

- running a family group conference uses a great deal of police time that might be better spent in some other way (Howard & Purches 1992).

- the fact that this scheme is coordinated by police further blurs the line between policing and social work (Harris & Webb 1987).

- families are no longer the most important socialising influence on adolescents. After the period of primary socialisation, peer group and subculture have more influence on young people than do families (Pitts 1988, pp. 81-2).

- the scheme is inappropriate for some young offenders. Doubts have been expressed, for instance, about the applicability of a family group conference model for young Aboriginal offenders in western New South Wales. The general argument tends to be that this is yet another initiative within "a justice system that is predicated on Western middle-class values" (Gale et al. 1990, ch. 8).

How Valid are these Concerns?

Net-widening

The concern that more young people will be dealt with under this scheme than under alternative schemes is valid. It is based on the more general belief that some forms of professional intervention are more harmful than no intervention whatsoever. Academic versions of this theory have tended for a decade or so to cite the works of writers such as Michel Foucault (1977). In simplistic versions of the theory, the historical record has been interpreted to show every change in the nature of social control as an increase in control by the state. For some, the policy implications of such a theory were to embrace a sort of ill-defined libertarianism, the consequences of which were never fully thought through. These theories have now reached the end of their shelf life and are of no great importance here.

The concerns of welfare practitioners, however, are important. Many practitioners believe that excessive intervention can undermine rather than strengthen people's control over their own lives. The designers of the juvenile cautioning scheme in Wagga share this belief.

In the specific case of juvenile justice, careful consideration has had to be given to concerns about widening the net of professional intervention. Police charge sheets for the Wagga district patrol until 1990 show quite clearly that, as in many parts of the country, young people had been coming to the attention of police for astonishingly trivial matters. Offences were defined according to legal technicalities. Police were process workers, pushing young offenders through a system that regularly left offenders feeling embittered and left victims and police feeling frustrated. Indeed, this sense of frustration was a catalyst for the Patrol Commander's decision to suggest an alternative cautioning scheme (*see* O'Connell & Moore 1992).

Making that scheme work, however, has forced police to measure the triviality or seriousness of offences according to an alternative set of criteria. The most significant of these criteria is whether the individual and social damage caused by an offence is sufficiently serious to warrant convening a family group conference. Adopting this criterion has actually led to a significant reduction in the number of young offenders who have been charged. The family group conference model has thus not only offered police

a more effective means of dealing with young offenders and certainly a far more effective means of helping victims. It has also forced police to think more carefully about whether their intervention is warranted at all. In this sense, the scheme has been associated with a narrowing, not a widening, of the net that drags young people into the criminal justice system.

In another sense, however, the scheme can be said to have a net-widening effect. It is designed that way. But contrary to the recently fashionable theory that all forms of social control were leading us to some sort of totalitarian dystopia, this net-widening is seen as positive. The scheme makes a very important distinction between different types of social control: "The net that is widened is not the net of state control, it is the net of community control" (Braithwaite 1993). The role of police is to encourage this widening of social control but they do so under an alternative paradigm of policing. In coordinating the juvenile cautioning scheme they are not acting primarily as gatekeepers of the criminal justice system, although they retain that important role. Rather, they are acting as coordinators of a social justice system (Moore 1991).

Is the scheme too costly?

If one ignores the underlying processes occurring in a family group conference, then the criticism that the scheme is extravagant has some attraction. Police complaints about limited resources could be read as an argument for allowing community panels to deal with young offenders, thereby freeing police to deal with more important matters. However, if arguments about the processes occurring in family group conferences are valid, then the new cautioning scheme could be seen as highly cost efficient. To use a financial metaphor that would gladden the hearts of police auditors, conferences could be seen as investments that will pay substantial dividends. To determine just how substantial these dividends might be will require careful evaluation over time.

It is clear at this stage that the conferences firstly allow for the acknowledgment of emotions in the process of dealing with crime and secondly, encourage offenders to face the consequences of their behaviour. This is not done in isolation but in the social context of the group of people most affected. As a result, young offenders are given an opportunity to empathise with others. This exercise in conscience-building can lead to a far more subtle, far more effective and far less harmful form of policing than the blunt instrument of state control by an arresting police officer if the young person were to reoffend. A focus on offending behaviour rather than on the personality of young offenders avoids stigmatisation while encouraging young people to take responsibility —with the support of others—for their future behaviour.

Investment in this process would seem to represent an admirably intelligent use of police resources. It must be stressed, however, that this is only one half of the equation. To focus exclusively on the likelihood of recidivism is to remain fixed on the pendulum that swings between welfare

and justice models, moving back and forth between the rehabilitative and the punitive ideal.

The focus of the new cautioning scheme is elsewhere. It is based on a theory that considers reparation for the immediate victim—and for other people affected by a crime—to be of vital importance. The family group conference offers victims of a crime the opportunity to deal with their resentment and anger, to overcome their sense of degradation and to restore their own self-respect. It is difficult to put any sort of economic value on this opportunity. It also makes the cautioning scheme difficult to compare with the two other major informal methods for dealing with young offenders since it seeks to do much more than these other methods.

Nevertheless, a crime prevention strategy that is serious about minimising the harm caused by crime must offer victims an opportunity to achieve successful symbolic reparation. The forum of a family group conference appears to do this both efficiently and effectively. The goals of achieving "satisfaction" for the victim and "rehabilitation" for the offender are not confused or in conflict. Rather they are seen as two aspects of the one social process.

Is the line between policing and social work becoming blurred?

Concerns about blurring the distinction between social work and policing are valid and significant within the traditional paradigms of these two activities. In so far as the primary role of police has been to act as gatekeepers to the criminal justice system, social workers have been seen to offer a check on excessive use of that police power and an alternative to the justice model for dealing with young offenders. Some of the more simplistic interpretations of this balance of power have tended to portray the tensions between social work and policing in terms of a modern morality play; in this play, the forces of light save children from the rigours of the justice model by offering the welfare alternative.

As has already been suggested, however, the superficial differences between the welfare and justice models obscure their fundamental similarity: they both involve professional human service workers—collectively and confusingly known as "the state"—intervening in the lives of people. They do this when social or community mechanisms of control are seen to have failed. Neither model is optimal. Ideally, mechanisms that can re-establish effective—and just—community control need to be developed. The family group conference is considered to be just such a mechanism. Of course, no forty-minute session—no matter how powerful or transformative—can solve problems caused by years of abuse, injustice, neglect, incompetence or just bad luck. It can, however, act as a "circuit breaker" or "shock treatment" to stop further deterioration. It can identify some of the family and social problems that may have encouraged delinquent behaviour.

It is important to recognise that the primary role of police in these conferences is neither that of gatekeepers of the criminal justice system nor that of welfare workers. The sergeant running the conference umpires the interaction between the various players but—to continue the sporting

metaphor—does not get involved in the game. The police role is that of boundary umpire, ensuring, as it were, that the game does not get too rough or cross the boundaries of acceptable and legal behaviour.

Problems identified during a family group conference may subsequently require the attention of professional counsellors. Police are not presuming to offer this sort of professional guidance. Rather, they are encouraging members of a community to police themselves. The important safeguard is that this process takes place strictly within the boundaries of a rights-based legal system. Police remain gatekeepers of the criminal justice system as a last resort. They play the more important and more effective role of coordinating social justice in two ways. Firstly, they encourage community control rather than state control. Secondly, where professional help is needed, police can make appropriate referrals. The line between policing and social work appears blurred only because this arrangement represents a far more effective model of cooperation between professionals. Their aims are no longer in conflict if they are working within a paradigm of reparation and community control rather than within a paradigm of individual treatment and state control.

One aspect of the criticism about blurred boundaries remains valid. If the sergeant in charge of a family group conference is not clearly aware of the significant differences between the paradigms of community control and state control, it may be difficult to avoid the temptation to intervene inappropriately in the conference process. Faced with one or more angry, apparently selfish and initially unrepentant young offenders, it may be all too tempting to deliver an impromptu lecture on the benefits of good citizenship and other wholesome attitudes, in the great tradition of the formal sergeant's caution. Immediately this changes the rules: community control reverts to state control and the offender becomes a victim of police verbal abuse. This danger has been avoided in the Wagga cautioning program largely because the police who designed the scheme are running the conferences. If the program is to be implemented elsewhere, however, great care will need to be taken to ensure that conference coordinators are thoroughly trained not only in the basic practices of mediation but in the underlying principles. They must remain umpires and resist the temptation to become players.

Are families no longer the most important socialising influence?

It has been suggested that the family is not necessarily the appropriate group within which to address the problem of juvenile offending. Three major schools of thought argue this line. They might be termed, respectively, the historical, the sociological and the political school.

The first of these schools claims that the family has lost its once privileged status as the most important socialising influence on children and, in Christopher Lasch's (1977) famous phrase, it seeks unsuccessfully to be a "haven in a heartless world". Other institutions, according to this argument, have taken on much of the task of socialisation.

Perhaps most influential have been the institutions and media of modern mass culture, a mass culture which has created "an incongruous alliance

between some of the most powerful corporations ... and some of the ... least articulate or important citizens" (Gilbert 1986, p. 213). This line of argument is commonly supported by reference to census data suggesting that the "traditional family" is a disappearing species since the two-parents-plus-children arrangement now accounts for not much more than a quarter of households in parts of the rich Anglophone world.

Closely related to this historical argument about the reduced role of the family are a range of sociological theories. Some of these have had a considerable influence on criminal justice policy. Theories of differential association, cultural transmission, differential opportunity and ethnic succession all locate the major influences on young offenders outside the family (*see* Moore 1992a).

A third school of thought argues that dealing with young offenders and their victims within a family group is inappropriate not because families lack influence but because that influence is malign. Violence and injustice within the family is seen as the primary cause of the anger, shame and resentment felt by many young offenders.

As it happens, the family group conference model for cautioning young offenders has accommodated the concerns of these three schools of thought. There is no requirement that the people who accompany and support young offenders during the group conference be members of their immediate or extended family. In some cases, family members may not be available or may refuse to attend. In other cases, it may be better that they do not; estrangement between a young offender and his or her family may be virtually irreparable. In such cases, alternative supporters are needed. But such cases are likely to be relatively rare. Indeed, there is an emerging consensus that reports of the death of the family have been greatly exaggerated.

Furthermore, there seems to be growing agreement between the more thoughtful conservative, liberal and feminist theorists that inadequate theories about the economic and social role of families have led to some serious policy errors in recent decades. Nowhere is this consensus more pronounced than in recent theories and policy proposals concerning the urban underclass in the industrial cities of the United States (*see* Jencks 1991; Mead 1992).

The urban ghettos of the United States are an extreme case of social disintegration but they do offer some general lessons. Perhaps the two most important points of agreement in the literature on urban decay are, firstly, that treating individuals and communities as passive victims further corrodes social bonds and, secondly, that families should remain the most fundamental agent of socialisation.

On this latter point, recent social policy proposals agree with some contemporary feminist legal philosophy. Both groups of writers argue against the notion that the family is a private world, separate from the public sphere. A just family is, rather, the basis of a just political and social order. Despite this, legal theorists have traditionally paid little attention to the process by which children develop into mature citizens with a sense of justice. Much

legal philosophy seems to assume that the development of good citizens is inevitable. It is not:

> Unless the first and most formative example of adult interaction usually experienced by children is one of justice and reciprocity rather than one of domination and manipulation or of unequal altruism and one-sided self-sacrifice, and unless they themselves are treated with concern and respect, they are likely to be considerably hindered in becoming people who are guided by principles of justice (Okin 1989, p. 17).

We rely, in other words, on the family, as the first school of moral development. Families have the difficult task of producing individuals with a capacity for empathy and a sense of justice (Okin 1989, ch. 1). Unfortunately, some families fail this difficult task. The question then is whether to dispense altogether with the family as a school of moral development or whether to offer assistance.

Some proponents of the "historical" or "sociological" schools of thought would argue that family influence is so eroded as to make the question irrelevant. The theory on which the juvenile cautioning scheme in Wagga is based—and the experience of practitioners—would suggest otherwise. For those who needed it, there has been overwhelming evidence after the first year of operating the scheme in Wagga that families of most young offenders have experienced some dysfunction. The problem is not that families have too little influence over young offenders but, rather, that many young offenders resent the influence of their families. This evidence however, only constitutes an argument against using families in group conferences if families are thought of as unified groups with shared goals who might consciously and collectively try to victimise one family member. This is very rarely the case (*see* Gordon 1988).

Of course, many young offenders perceive themselves as victims of their family circumstances. Family group conferences offer an opportunity for these circumstances to be discussed in a group that is larger than the nuclear family. The result is regularly cathartic. Since the basic currency of the conference is empathy and justice, any perceptions of injustice within the family unit tend to be revealed.

Victims and their supporters often perceive the offender differently when the offender's family circumstances come to light. They may not condone the offending action. They may, however, come to understand the circumstances that produced feelings of shame and anger in the young person who committed the offence. Where the basic conflict is generational, siblings, grandparents or uncles and aunts may come to the defence of the young offender; they appreciate the opportunity to share their perceptions of family injustice in a forum that is intimate yet public. The conference therefore offers an alternative sphere of justice—one that is larger than the family but one in which there are nevertheless some shared understandings about "common decency" (*see* Walzer 1983, 1988).

Is the scheme inappropriate for some young offenders?

The argument that the family group conference model might be inappropriate for some young offenders rests on two key beliefs. One of these beliefs is that the model incorporates notions that purport to be universally valid but are not. The second belief bolstering arguments against the general applicability of family group conferences is that police cannot be entrusted with a scheme like this because their relationship with some groups—most notably Aboriginal Australians—is simply too poor. Young Aboriginal people, it is argued, will simply not cooperate with any scheme coordinated by police.

The first of these beliefs is usually expressed in terms that had some life pumped back into them during the 1960s and that have helped to obscure social theory and political practice ever since. This is the belief that a range of professionals are too keen to impose "middle class" or "bourgeois" values on other people—in this case young people—who are from "the working class", "the non-working class" or a minority group with different cultural norms.

It has also been argued that schemes such as the juvenile cautioning program in Wagga fail to take account of "structural inequality" and are unaware of the "dynamics of power" in disadvantaged communities. These criticisms, if expressed in more meaningful language, may indeed be valid if directed at certain types of counselling for families or individuals in some other context. The essential concern being expressed here is that law is not socially neutral; it affects some social groups more than others and gives legal professionals power over these groups.

This is an important concern but it does not apply to family group conferences where the only professional present is the coordinating police officer. That officer's role is one of mediation rather than intervention. This mediative role does not involve the direct imposition of any values—"middle class" or otherwise—on offenders, victims or other active participants. All that is required of participants is that they have some desire for self-respect, that they show the cognitive and emotional capacity to recognise the equivalent desire in the other people who are present and that they consider these other people to have a right to self-respect.

In short, all that is required is the capacity for empathy and a sense of justice. In some rare cases, genuinely sociopathic individuals will not meet these requirements. However, the notion that whole groups of young people are sociopathic by virtue of their background is simply offensive. Nevertheless, this appears to be the main implication of the related criticism that family group conferences do not take account of "structural inequality". The only alternative reading of this criticism is that it is taking the scheme to task for not overcoming structural inequality. The notion that a forty minute conference—or any professional help that follows—can instantly rectify economic, social and other disadvantages must rate as an extreme example of longing for the quick political fix.

Of far more significance is the suggestion that any cautioning scheme operated by police cannot work in those parts of the country where relations between police and young people are very poor. It has been suggested, for

instance, that the scheme could not work in parts of inner urban and western Sydney and in some of the towns of western New South Wales. The preferable alternative to the court system for young Aboriginal offenders, according to one line of argument, would be a community aid panel composed entirely or predominantly of Aboriginal citizens.

As has already been suggested, however, the processes that occur when a panel lectures a young offender are fundamentally different to the processes that occur in a family group conference. The theory that has informed the Wagga cautioning scheme is more concerned with these psychosocial processes than with skin colour; it is more concerned with finding solutions to present and future problems than with apportioning blame for past wrongs. Certainly, if young offenders and their families or, indeed, a particular community are implacably hostile to police as players in local street politics, they are unlikely to grant police the right to umpire conflict. A change in the ethnic composition of community panels is, however, equally unlikely to solve the social problems of such communities. The basic family group conference model was developed by Maori people who were dissatisfied with the inability of the formal criminal justice system to deliver what they considered were just and effective outcomes. The family group conference model has helped them to achieve these outcomes.

Five major concerns about the Wagga juvenile cautioning program and similar initiatives have been considered here. The charge of net-widening can be answered with the observation that the net of community control has indeed been widened in Wagga since the integrated crime prevention program began in 1991. The net of state control, however, has been narrowed. In order to stay that way, the commitment by local police not to charge young people for trivial offences will have to be upheld (*see* White 1990). The simple test of whether a conference is warranted provides a clear criterion.

The second concern—regarding the cost of the program—will ultimately have to await evaluation in a longitudinal study. At this stage, several observations about the cost of the program are worth making: the cautioning scheme does not make large demands on police resources. Furthermore, if young offenders are less likely to reoffend, as the theory of reintegrative shaming predicts, the scheme will represent a very sensible investment. The scheme also achieves both material restitution and symbolic reparation for victims. The latter is not easily measured in economic terms but is surely important to personal and social well-being.

The third concern—regarding the apparent merger of policing and social work—overlooks the changed role of police in the cautioning scheme. They are umpires rather than players. Some concern is legitimate, however. Police mediators will need to be well grounded in theory and carefully guided in practice if schemes are to be established elsewhere.

The fourth concern—that families are not the appropriate institution to deal with the problems of young offenders—is rejected. The help of other individuals and agencies may be required but the family remains the primary school of moral development. If family influence on the young offender is not benign, the family group conference is a forum well-suited to addressing this problem.

The final concern raised by proponents of other informal methods for dealing with young offenders is that the scheme is not generally applicable. One notion frequently used here is that some young people, by dint of socio-economic or ethnic background, cannot empathise with others or understand the concept of justice. The designers of the cautioning program reject this argument; the program is premised on a belief that the capacity for empathy is a human universal (*see* Brown 1990). Serious attention needs to be given to the more specific concern that police and young people in some parts of the country are so alienated as to be unable to work together. This is a good argument against imposing the scheme on communities beset by tension between police and young people.

Of course, there is no justification for imposing the scheme anywhere without thorough consultation. If it is to be implemented elsewhere, it will need to be at the request of Community Consultative Committees or, at the very least, with the full consent and cooperation of offenders, victims and their families. Ultimately, however, the scheme offers the possibility of reducing tensions between police and young people by restoring the conflict to those directly involved. The concerns of those who have supported alternative informal arrangements can be answered and accommodated.

Conclusion

The model can thus be seen as a crime prevention scheme that seems to offer more than crime prevention and one important reason for this is that its designers have gone about their task in the right way, beginning with a well formulated theory—one that is empirically verifiable—before establishing the scheme in practice. The support networks for the core program were already in place before the juvenile cautioning scheme was implemented. School liaison and truancy programs were established and functioning well. The fact that the cautioning scheme is run by local police means that no additional bureaucracy needed to be created. These arrangements have also helped to ensure that the basic legal rights of the offender are not violated by excessive community demands. And because the scheme has such a solid institutional and theoretical base, it may yet achieve more than it was designed to achieve rather than less. It can be seen, using abstract political categories, as a local example of the state "relinquishing its monopoly over the definition of order"—without relinquishing the formal individual rights guaranteed by a liberal legal system (Shearing & Stenning 1987, p. 13). The model transforms citizens from "passive consumers of police services" to active participants in the ordering of their own lives (Johnston, 1992 p. 155). The model not only recognises that there are "moral-emotional aspects of [public] order" but seeks to use these aspects to build positive community control (Scheff & Retzinger 1991, p. 173).

The scheme should not be seen as the realisation of a justifiable fear that crime prevention policies are driving general social policy (Bright 1991, p. 81). That fear is most likely to be realised when central governments and ambitious politicians play with the general fear of crime to suit their own ends. This scheme represents a very different politics of crime control. It is

not an example of social policy for passive citizens, a policy driven by the fear of crime. Rather, it is an example of active citizens dealing with the effects of crime collectively and cooperatively. Public officials safeguard the process; they do not drive it. The process is driven, instead, by those who are most harmed by the effects of social disorganisation and disintegration. The cautioning scheme offers them an opportunity to deal with those effects. In the process, it may also suggest ways of dealing with the broader problems of social disorganisation and disintegration. In that sense, the scheme may indeed achieve more than its designers intended.

The juvenile justice scheme established by the Wagga Wagga police patrol awaits a full evaluation. It can be said at this stage that the scheme has considerable support from people who have been involved with it, from a growing number of initially sceptical police and from other individuals and groups in the community who have been involved with or observed the cautioning scheme and other aspects of the integrated crime prevention program.

Its wider significance is that it has taken account of a sophisticated theory of the causes of crime. This theory sees the lack of empathy for victims, a characteristic common to offenders, as both an individual and a social problem. The program seeks to create a forum in which the harm caused by crime can be addressed and partly healed. It also seeks to give offenders an opportunity to develop empathy and a broader sense of justice. It works within a paradigm of reparation rather than a paradigm of retribution. It should not be seen as working against the existing criminal justice system or as undermining the important legal and political safeguards of that system. Rather, it offers what is considered to be a more effective model of dealing with crime at one end of the criminal justice system—the field of juvenile justice. Whether the paradigm of reparation can or should be gradually extended to the rest of the criminal justice system is another matter. The scheme offers a model of how that might be done.

For the time being, the model seems to offer a better outcome for young offenders, their victims and the immediate communities of both. It moves beyond the paradigm of retribution in which a balance between welfare and justice is determined according to acts of legal mercy. It argues that an offer of forgiveness to offenders by their victims is far more effective than an offer of mercy for offenders from the state. Rather than seeking to minimise the punishment imposed on a young offender, the scheme minimises the harm done to a community. And this may make the scheme a true example of community policing. Active citizens are creating their own order; a community is policing itself. They do not need a formal code of police ethics to do this. Instead, their policing operates according to basic values of justice, reciprocity and forgiveness.

References

Bottomley, S., Cunningham, N. & Parker, S. 1991, *Law in Context*, Federation Press, Sydney.

Braithwaite, J. 1989, *Crime, Shame and Reintegration,* Cambridge University Press, Melbourne.

---------- 1993, "Juvenile offending: new theory and practice", in *National Conference on Juvenile Justice,* eds L. Atkinson & S.A. Gerull, Conference Proceedings No. 22, Australian Institute of Criminology, Canberra. (*See* pp. 35-42 of this volume).

Bright, J. 1991, "Crime Prevention: The British Experience" in *The Politics of Crime Control,* eds K. Stenson & D. Cowell, Sage, London.

Brown, D. 1990, *Human Universals,* McGraw Hill, New York.

Christie, N. 1982, *Limits to Pain,* Martin Robertson, Oxford.

Cohen, S. 1988, *Against Criminology,* Transaction, New York.

Dagger, R. 1991, "Restitution: pure or punitive?", *Criminal Justice Ethics,* vol. 10, no. 2, pp. 29-39.

de Haan, W. 1990, *The Politics of Redress: Crime, Punishment and Penal Abolition,* Unwin Hyman, London & Boston.

Foucault, M. 1977, *Discipline and Punishment: The Birth of the Prison,* Panthean Books, New York.

Gale, F., Bailey-Harris, R. & Wundersitz, J. 1990, *Aboriginal Youth and the Criminal Justice System: The Injustice of Justice?,* Cambridge University Press, Melbourne.

Gilbert, J. 1986, *A Cycle of Outrage: America's Reaction to the Juvenile Delinquent in the 1950s,* Oxford University Press, Oxford.

Gordon, L. 1988, *Heroes of their Own Lives: The Politics and History of Family Violence,* Viking Penguin, New York.

Gottfredson, M.R. & Hirschi, T. 1990, *A General Theory of Crime,* Stanford University Press, Palo Alto.

Harris, R. & Webb, D. 1987, *Welfare, Power and Juvenile Justice,* Tavistock, London.

Howard, B. & Purches, L. 1992, "A discussion of the police Family Group Conferences and the Follow-up Program", *Rural Society,* vol. 2, no. 2, pp. 20-3.

Jencks, C. 1991, *Rethinking Social Policy: Race, Poverty and the Underclass,* Harvard University Press, Cambridge, MA.

Johnston, L. 1992, *The Rebirth of Private Policing,* Routledge, London.

Katz, J. 1988, *The Seduction of Crime,* Basic Books, New York.

Lasch, C. 1977, *Haven in a Heartless World: The Family Besieged,* Basic Books, New York.

Maxwell, G. & Morris, A. 1990, "A statistical overview of juvenile offending before and since the *Children, Young Persons and their Families Act, 1989",* Institute of Criminology, Wellington.

Mead, L. 1992, *The New Politics of Poverty: the non-working poor in America,* Basic Books, New York.

Moore, D.B. 1991, "Police responses to community policing" in *Police and the Community,* eds S. McKillop & J. Vernon, Conference Proceedings No. 5, Australian Institute of Criminology, Canberra.

---------- 1992 "Some current concerns in US criminal justice: lessons for Australia?" in *Proceedings of the 1991 Conference of the Australasian Association of Criminal Justice Educators,* ed. D. Bull, Charles Sturt University, Bathurst.

Murphy, J.G. & Hampton, J. 1988, *Forgiveness and Mercy,* Cambridge University Press, Cambridge.

O'Connell, T. & Moore, D.B. 1992, "Wagga Juvenile Cautioning Process: The General Applicability of Family Group Conferences", *Rural Society,* vol. 2 no. 2, pp. 16-19.

Okin, S.M. 1989, *Justice, Gender and the Family,* Basic Books, New York.

Pitts, J. 1988, *The Politics of Juvenile Crime,* Sage, London.

Rose, N. 1990, *Governing the Soul: The shaping of the Private Self,* Routledge, London.

Scheff, T. J. & Retzinger, S. M. 1991, *Emotions and Violence: Shame and Rage in Destructive Conflicts,* Lexington, Lexington Books.

Seymour, J. 1988, *Dealing with Young Offenders,* Law Book Company, Sydney.

Shearing, C.D. & Stenning, P.C. *(eds)* 1987, *Private Policing,* Sage, Newbury Park.

Stenson, K. & Cowell, D. (eds) 1991, *The Politics of Crime Control,* Sage, London.

Walzer, M. 1983, *Spheres of Justice: A Defense of Pluralism and Equality,* Basic Books, New York.

---------- 1988, *The Company of Critics: Social Criticism and Political Commitment in the Twentieth Century,* Basic Books, New York.

White, R. 1990, *No Space of Their Own: Young People and Social Control in Australia,* Cambridge University Press, Melbourne.

Wright, J. 1991, *Justice for Victims and Offenders: a restorative response to crime,* Open University Press, Milton Keynes.

Zehr, H. 1990, *Changing Lenses: A New Focus for Criminal Justice,* Metanoia, London.

WAGGA WAGGA JUVENILE CAUTIONING PROGRAM: "IT MAY BE THE WAY TO GO!"

Terry O'Connell

THE WAGGA WAGGA MODEL OF JUVENILE CAUTIONING WAS INTRODUCED BY THE Wagga Wagga Patrol on 1 August 1991. Introduction of the new model followed a series of discussions involving the Wagga Wagga Community Consultative Committee, Patrol Commander Chief Inspector Wales and some sergeants who were presented with the challenge of improving the policing and processing of juvenile offenders.

The model developed in Wagga Wagga draws on the principal elements of the contemporary New Zealand family group conference and upon Braithwaite's (1989) theory of reintegrative shaming. The process is as concerned with the impact of crime on the victim as it is with the offender's background and motives. It seeks to address problems leading to the commission of the offending behaviour and to deal with the harm caused by that behaviour. It seeks to resolve these problems within the context of the offender's and victim's community. People directly relevant to the victim and offender are involved in this process (for further details *see* O'Connell & Moore 1992).

Results

To put the current statistics on juvenile offences into context, a comparison with the statistics from the previous two years has been made. These statistics represent formal interventions by police only. No attempt has been made here to distinguish between categories of offences.

Table 1

Charges, 1989-90, 1990-91, 1991-92, Wagga Wagga

	1989-1990	*1990-1991*	*1991-1992*
No. of Juveniles	327	199	53
No. of Offences	444	222	115
Charged % (total interventions)	77%	56%	28%
Total Interventions	425	355	186

Table 2

Cautions, 1989-90, 1990-91, 1991-92, Wagga Wagga

	1989-1990	*1990-1991*	*1991-1992*
No. of Juveniles	98	156	133*
No. of Offences	102	159	138
Caution % (total interventions)	23%	44%	72%

* Note: number of re-offenders 1991-1992 was 12 (9%)

Source: manual records (Criminal Information Reports) maintained by Patrol Intelligence Officer, Wagga Patrol.

Victim Outcomes

- Compensation: Amount sought : $5730 Amount paid : $5320 (93 per cent)
- Victim participation rates in all cautioning conferences: 95 per cent
- Victim satisfaction: "very high" (based on preliminary and unpublished research undertaken at Charles Sturt University in 1992).

Discussion

What do the various yearly juvenile numbers mean?

The raw figures provide only limited insight into the rate or nature of juvenile offending over a three year period. They do, however, indicate that during that period, there was a very significant decrease in the number of formal police interventions. The total of charges and cautions dropped from 425 to 186 (66 per cent). Within that total, the decrease in the number of juveniles charged and placed before the court was even more significant: the number went from 327 to 53, a drop of 84 per cent.

The rate of cautions for the same period increased from 30 per cent to 72 per cent. It is not possible at this stage to compare recidivism rates; without further information, little meaning can be attached to the 9 per cent rate of re-offending for those cautioned during the twelve month evaluation. However, the levels of compensation and victim satisfaction/participation are self explanatory, and very important. These are quantitative measures of outcomes that are significant determinants of the quality of the juvenile justice program.

Significant reduction in juveniles charged—what is the effect?

The number of juveniles charged over the last twelve months has fallen from 199 to 53, a fall of around 75 per cent. This represents a significant outcome for the offenders, the families, the victims, the courts, the Office of Juvenile Justice and the

Wagga Wagga community. There is also a considerable financial savings in diverting young people from the courts.

A direct result of the dramatic reduction in the number of juvenile offenders before the court has been a corresponding decrease in the load of cases for the Office of Juvenile Justice. This reduction has been most noticeable over the past eight months. It has allowed youth workers to spend much more time on those fewer offenders who have been subject to court orders/conditions.

It is now an unusual situation to find a juvenile first offender before the court as the new police procedures ensure that this becomes the last possible resort. A panel of sergeants is now responsible for reviewing every juvenile matter prior to deciding the most appropriate course of action, that is, warning, formal caution, summons/court attendance notice or charge.

What about the crime rates over the past three years?

The most persistent argument against the Wagga Wagga model of cautioning is the loss of the traditional general deterrent value normally associated with the court process. It has been argued that anything less than court represents a soft option, and will result in an increase in crime. Notwithstanding the recognised difference between actual and reported crime rates, the steady decrease in reported crime over the past three years in Wagga Wagga would not support the claims of critics. Of the five most frequent categories of reported crime that juveniles are likely to be involved with—break, enter and steal, steal from motor vehicle, stolen motor vehicles, stealing, malicious damage—only malicious damage has shown any increase over the past three years. The general decline in juvenile crime has occurred despite 20 per cent youth unemployment and increasing family dislocation in Wagga Wagga. There has also been an increase in the number of marginalised youth in Wagga Wagga. These youth possess very little education and few skills: they would normally occupy unskilled or semi-skilled occupations which have largely been eliminated through technological change, and they have little prospect of employment in a highly competitive labour market. These major social indicators would normally be associated with an increase in reported crime rates. The reduced crime rates are therefore quite exceptional. We need to ask why the total amount of juvenile crime has apparently fallen and, secondly, why there has been a significant decrease in the number of offenders charged.

What has Lead to a Reduction in Juvenile Offending?

The Wagga Wagga experience with community policing began several years ago. The establishment of the Wagga Wagga Community Consultative Committee in 1987 represented the first attempt at involving the community in matters that traditionally were the preserve of the police. Over the following two years, a limited number of Neighbourhood Watch and Safety House programs was established. Generally, they lacked support and acceptance from the police.

However, between 1989 and 1992 there were a number of important community policing initiatives that have contributed to a far greater community awareness and responsiveness to crime. The critical link between police and schools was given a high priority, and the Police Citizens Youth Club became an integral part of this link. In

1989, the first crime prevention workshop for 200 secondary school children was held, and over the next three years this was expanded to include all high schools and secondary schools. During 1991, some 3,000 children were involved in crime prevention workshops at the Police Citizens Youth Club. These workshops ran from one to three days.

In addition, every school child within Wagga Wagga has now had some contact with a police officer through other school based programs such as protective behaviours and safety lectures, legal studies and drug/alcohol lectures. Considerable emphasis has been given to a program that asks all schoolchildren to examine crime and its consequences.

The provision of resources to start Beat Policing in November 1990 represented the first real commitment to pro-active policing in Wagga Wagga. Over the ensuing twelve months, a considerable number of innovative community based policing programs was introduced. A two-day Beat Policing and Community Seminar was held in January 1991 where all areas of community concerns were fully explored. The local media has played a critical role during the development of all the community policing programs, and, in many respects, the level of community involvement is largely attributable to the exposure given by the media.

The other community programs established included Neighbourhood Watch (18 areas), Safety House, Lay Visitors, Court Companions, Taxi Watch, programs for the elderly and the use of a mobile police caravan to visit suburban shopping centres on a regular basis. A Special Needs Officer developed crime prevention and other programs for the many disabled groups within the community, and this ensured contact was made with an often forgotten group within the community.

Caution should be exercised when drawing any firm conclusion about the influence on crime rates due to the expansion of community policing programs. Beat Police activity is broadly designed to strengthen the relationship between police and community, by the development of more effective networks using a pro-active style of policing. Measuring cause and effect in this regard is difficult, however, and there is not a great deal of empirical research on Australian community policing programs.

Relating the Flinders Park evaluation to Wagga Wagga, where one of the more comprehensive and concentrated range of community policing programs yet provided to a single Australian community has been developed since 1989, it would be reasonable to expect an increase in reported crime. Further a high level of community confidence in the Wagga Wagga police, was confirmed in a survey undertaken by Charles Sturt University students (Payten & Fitzgerald 1991). Yet, the available statistics (see above) show a clear reduction in reported crime over the three-year period. It is reasonable to claim that community based policing initiatives have influenced crime rates in a positive way, even though further research is required to determine the extent to which policing initiatives are responsible for the fall.

The area of school truancy was given a high priority by police. In conjunction with the Home School Liaison Officer (School Education), a systematic approach to identifying hardcore school refusers was initiated. In 1990, fifteen of the most frequent secondary school truants were invited by the Beat Police to a barbecue at the Police Citizens Youth Club. This heralded the start of a concentrated examination of the linkage between truancy and juvenile crime. A police problem solving approach was employed (Goldstein 1990).

A name check of juvenile offenders charged or cautioned during 1990 revealed that about half were regular truants. The truancy program maintained a high police profile in the most likely haunts for truanting young people, and with the assistance of the media and shop keepers, the movement of most truants was closely monitored. Many of these children came from single parent homes or homes where both parents worked. These children were largely unsupervised. In many cases, schooling problems had resulted in the expulsion or suspension of some children. This tended to legitimise truancy. Police encouraged the schools to look for alternatives to expulsion. One option involved a program at the Police Citizens Youth Club, where these young people were supervised whilst engaging in some remedial and challenging activities.

A consequence of the high police profile, particularly in the area of youth, has been the enhancement of contact with the many community agencies that provide support for youth and their families. The level of networking within Wagga Wagga allows individual children with problems, who are likely to be dealt with by several agencies, to be provided with a casework approach. This ensures more effective and coordinated support. This is particularly important when dealing with those young people considered at risk, who, if left to their own resources are likely to drift into low level crime.

Introducing a new approach to juvenile cautioning

Against this community based policing background, the Wagga Wagga model of juvenile cautioning was developed in 1991. Chief Inspector Wales was concerned about the lack of consistency in the ways in which police generally handled juvenile offenders. Traditionally, cautioning involved the sergeant, the offender and a parent, and was generally based on the notion of "last chance". This approach added little to the young offender's understanding of the implications of offending. It also failed to consider the victim. The question of restitution or compensation was rarely addressed.

In the court system, the victim also received no meaningful recognition and generally no compensation. Police were well aware of the inadequacies of this system. A survey of fifty Wagga Wagga police was conducted in June 1991 to determine attitudes to juvenile justice generally. It found that police unanimously agreed on the following: the offender received no punishment from the courts; their parents did not care about the young offender's court appearance and were not accountable; the victim always remained the victim; and the community had to carry the costs associated with juvenile offending.

There was both a need and an unofficial mandate for change. A more effective cautioning approach was required, an approach that gave victims a positive role in the process. Victims needed the opportunity to confront offenders and tell them exactly how they felt. However, this option was considered unnecessarily complicated by police as it would be likely to involve angry victims, and would be a potential area for complaints. Consequently, the initial cautioning conferences were in some respects a journey into the unknown.

It was therefore important to develop the cautioning process slowly and ensure that it involved as many police as possible. The introduction of a review panel of sergeants, who meet once a week to review all juvenile matters, has generally helped police accept the merits of this approach. After processing 133 young offenders

during the first twelve months, there has been sufficient feedback from victims, offenders and their families, and sufficient positive endorsement from the community, to convince police that the aimless processing of juveniles is no longer a viable option within Wagga Wagga and that there is an effective alternative. Through the process of consultation and involvement, there has been far greater acceptance by the police that the approach is worthwhile and is not the soft option it first appeared to be.

The strength of the Wagga Wagga model is its flexibility. It only involves those people who are stakeholders or who can add some meaning to the process of resolving the conflict. It challenges police to consider juvenile offending in a more appropriate light. It requires police to become facilitators and mediators, by ensuring that the best possible outcome is achieved for all involved in a cautioning conference. Juvenile offenders are no longer automatically charged unless they have committed a serious indictable offence, have been refused bail or have had onerous bail conditions placed upon them.

Conclusion

There is strong evidence of a reduction in reported juvenile crime in Wagga Wagga. In fact, general crime rates during the period of the Wagga Wagga experiment have fallen (*see* Appendix A). One could not assert that the juvenile cautioning program was the cause of this fall. To reach such a conclusion, more thorough research would be required. However, the number of juveniles before court has been significantly reduced and victim satisfaction and restitution have both been greatly enhanced.

Whilst the impact of the various community policing initiatives on juvenile offending has been important, the introduction of the Wagga Wagga model of juvenile cautioning has provided the police and the community with the best way yet devised of dealing more appropriately and directly with both the perpetrators of juvenile crime and their victims. The model almost certainly has general application in other communities. Its strength is its flexibility, as it only involves people who are directly affected by the offence or are close supporters of the offender and victim. It deals with the unacceptable behaviour whilst encouraging the young offender to play a constructive role within his/her community. It allows offenders to accept responsibility for their behaviour, and parents or others to be more accountable for the young offender. It involves shaming and reintegration into the community, rather than stigmatisation and rejection.

Some critics have argued that only the unique social characteristics of the Wagga Wagga community have allowed this approach to work. Whilst it is conceded that the Wagga Wagga community provides a better environment for this approach than do many other towns or suburbs, the integrity of the model should nevertheless guarantee its success in any community. The model is fundamentally good policing practice: it provides all those connected with a crime with an opportunity to ensure that justice is both seen to be achieved and is actually achieved. The present legalistic and punitive court and penal system cannot honestly make this claim.

No longer can communities expect governments, legislators or police to solve the problem of harm caused by offending, nor can various community agencies afford to operate in isolation. Our ability to develop the type of communities and the quality of life for which we all strive, will be largely determined by the level of community

resources and involvement committed to resolving those problems that threaten community cohesion. Juvenile crime is one such problem. The lessons learnt from Wagga Wagga suggest that creating successful models to deal with juvenile crime is not only desirable, but also achievable.

References

Braithwaite, J. 1989, *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge.

Goldstein, H. 1990, *Problem Oriented Policing*, McGraw Hill, New York.

Gore, G. 1992, Victims of Crime: Wagga Juvenile Cautioning Process, Unpublished manuscript, Charles Sturt University, School of Humanities.

O'Connell, T. & Moore, D. 1992, "Wagga juvenile cautioning process: the general applicability of family group conferences for juvenile offenders and their victims", *Rural Society*, vol. 2, no. 2, pp. 16-19, August.

Payten, J. & Fitzgerald, R. 1991, "Beat police: the new direction in policing", report to the Wagga Wagga Community Consultative Committee.

Appendix A: Three Case Studies of Cautioning Conferences

Case No 1: Assault Occasioning Actual Bodily Harm

Background

A fifteen-year-old male offender was with a group of young people outside a Wagga High School, waiting to catch a bus. An incident in which the offender was hit on the foot with a stone by the fifteen-year-old female victim's brother, resulted in an altercation between the offender and victim. The offender lost his temper and punched the victim in the face causing a black eye and considerable swelling.

Police intervention

Police responded to a call from a supervising teacher. The young offender was interviewed by a detective because of the serious nature of the offence and injuries. Initially, the young offender was to be charged, but it was agreed that the cautioning conference would be more appropriate.

Caution process

The cautioning conference involved the following:

- the offender, offender's mother, father and younger brother;
- the victim, the victim's mother, sister and brother;
- the reporting police officer (detective);
- the sergeant as the cautioning coordinator.

The offender was confronted about his actions, which he admitted publicly within the group. Everyone was provided with an opportunity of expressing how he or she felt about the incident and how it had impact upon him or her. The offender's parents expressed embarrassment and shame about their son's actions. There was considerable emotion, blaming and excuses from both parties, who were well known to each other. Approximately one hour into the discussion, the victim's family started to express supportive sentiments about the offender, which basically said, "we still like him, we just didn't like what he did".

The mood of the discussions turned from blaming and anger to one of support for both families.

Outcomes

- the young offender publicly apologised to the victim;

- the victim was satisfied with being able to tell the offender exactly how she felt;
- both families believed that their relationships were greatly strengthened;
- the young offender acknowledged that he needed to manage his anger better;
- the young offender agreed to attend the Police Citizens' Youth Club for twenty hours to seek assistance with developing better skills and strategies for coping with his anger.

Issues

- it was likely that if the matter had been dealt with by way of charging it would have destroyed the family relationships;
- the conference had the opposite effect in that it strengthened these relationships;
- there are considerable savings in not using the courts;
- the young offender is more likely to benefit from this type of intervention;
- the victim and her family would have received far greater satisfaction than would have been possible at court;
- the police involved have gained a valuable insight into how effective cautioning can be used.

Case No 2: Stealing (Motor Cycle)

Background

Four fifteen-year-old male-offenders stole a motor cycle (value $8,000) and were apprehended by police whilst riding the cycle on a local football oval. There was approximately $1,000 damage caused to the cycle.

Police intervention

The four offenders were arrested, questioned in the presence of their parents, and admitted stealing the motor cycle "just to ride it around the park". Some police expressed concern that Police Instructions excluded this category of offence from caution. A decision was taken that this matter should be dealt with by cautioning conference, in spite of the victim wanting the offenders charged.

Caution process

The cautioning conference involved the following:

- three offenders and their mothers;
- one offender with mother and father;

- the victim;
- the reporting police;
- the sergeant as the cautioning coordinator.

The offenders were confronted about their actions by the victim, who explained that he had spent the past four years restoring the motor cycle; that it was his only transport; that it would cost him at least $200 in transport costs before his motor cycle would be repaired. The parents expressed their embarrassment and surprise about the incident; they generally spoke in a supportive fashion about the young offenders. Once the victim's anger had subsided, he stated that "there is no doubt about you all being good kids, I only hope you learn from this".

Outcomes

- each offender apologised to the victim;
- compensation of $1,200 was agreed to be paid within a month;
- each offender would deliver $300 personally to the victim;
- the victim was satisfied with being able to express his anger;
- the offenders' parents felt the conference had been a positive experience.

Issues

- if charged, the young offenders were unlikely to have gained the same level of understanding of the implications of the offending;
- the victim would have gained little from the court process;
- there would have been limited opportunity for compensation at court;
- police would have been dissatisfied with the court outcome;
- the cautioning process was positive for all involved; this would have been highly unlikely within the court process for the same offence;
- there are considerable cost savings with this approach.

Case No 3: Malicious Damage

Background

A traditional Year 12 breakup activity involving in excess of 200 students from a Wagga high school resulted in approximately $3,000 damage to advertising signs at a local car wash. The activity took the form of a scavenger hunt and a variety of items nominated that would gain points if collected. The signs were on the list, but due to the damage caused in the course of removing them from the walls, they had to be replaced. The signs were only able to be purchased from the United States, and this necessitated the cancellation of a promotion as well as a lost opportunity of casual employment for a local person.

Police intervention

Police investigations identified at least fifteen offenders who actually took signs, but many more were implicated. There was considerable local and national publicity given to the incident. There was mounting pressure to charge many of those involved. However, following discussions with the victim, it was decided that the incident should be handled by way of conciliation.

The police and victim attended the school and were involved in a meeting with all final year students. The consequences of the student action was fully explained by the victim and police, and the following was agreed to:

- elect five student representatives from the 240 students;
- report to the car wash at 5 p.m. that day;
- return the three outstanding signs;
- be prepared to meet with the victim, the company workers and police to work out an acceptable outcome.

Mediation process

The meeting with the five students, three teachers, two parents, victim, victim's employee and the police took place on the grass outside the car wash. It lasted about an hour. The atmosphere in the beginning was tense, but concluded with light-hearted interactions and relief. The victim fully explained how this matter had affected himself and the business. The students were upset that their behaviour has caused such difficulties.

Outcomes

- the students agreed to fully compensate the victim: each student was to be levied $15;
- each student (240) would spend two hours at the car-wash;
- the students apologised to the victim and wrote to the local media, apologising for the embarrassment caused to the school and their parents;
- the victim was fully satisfied, particularly as the matter had been conciliated and did not involve court;
- there was positive community support for the students following the apology and compensation.

Issues

- a full police investigation would have involved considerable time and disruption to the lives of young students about to sit for final examinations;
- the use of the court process to deal with this matter would have been costly and complicated;
- charging of students would have had a stigmatising affect;

- it was possible to obtain an outcome that suited all parties. Again, this is not possible within our court system;
- it was the most appropriate way of dealing with the matter.

POLICING JUVENILES: AN OVERSEAS AND WESTERN AUSTRALIAN PERSPECTIVE

Robert C. Kucera

> How beautiful is youth! How bright it gleams,
> with illusions, aspirations, dreams!
> Books of beginnings, Story without end,
> each maid a heroine, and each man a friend.
>
> Henry Wordsworth Longfellow

In presenting a paper on "Policing Juveniles" I sought an opening quotation that may encapsulate or set the scene, but unfortunately found few quotes attributed to police or about police, and even fewer that could be called "inspirational". In fact some quarters in Western Australia would suggest that perhaps I should use the quote by the Larrikin Irish play-write Brendan Behan:

> There's no situation so dismal -
> That a policeman can't make it worse!

In Western Australia if one believed everything one read in the newspapers or watched on television, one might reach that conclusion.

In fact, such a conclusion is far from the truth. During 1991, as the result of a Churchill Fellowship, I was able to look at the policing of young people in North America, Canada, France and the United Kingdom. I worked with both specialist and general officers dealing with youth.

This paper describes some of my experiences, briefly discusses the role of police as "gate-keepers" to the juvenile justice system, and talks a little about the West Australian experience.

First, the United States, where I saw the very best and probably the very worst in police practices, particularly with juveniles. Since the early 1980s the policing of juveniles has been very much governed by a degree of standardisation brought about through the Federal Government's introduction of minimum standards of juvenile justice. These standards evolved from a review of the American juvenile justice system carried out in the 1970s by the American Bar Association. They also either mirror or form the basis for many of the United Nations Charters, such as the Beijing Rules, and

many American police organisations have practised the standards to some degree since the early 1970s.

The United States Federal Government ensures that such standards are practised by undertaking funding of a percentage of police budgets. This funding is subject to accreditation, so unless police managers follow recommended practices in juvenile policing, they risk losing those funds. This also acts as a two-edged sword, with police being able to demand funding to ensure implementation. For instance, whilst I was in Honolulu, the juvenile lockup was closed because it did not conform to standards. This immediately caused a furore with the public and state government, bringing forth an immediate response in terms of funding from the Federal Government.

Using Honolulu as a yardstick, police there, as in all American jurisdictions, have specialist units. They deal with the juveniles after apprehension, or as a result of information from operational officers. In addition the units run programs for:

- gang tracking
- juvenile drug involvement
- runaways
- truancy
- domestic or family violence
- conflict resolution

The police are beginning to realise the need to address far more than just the enforcement of laws. The police in all countries are merely the net or bucket into which all those that slide through the system's "gaps" are thrown.

Honolulu is currently gripped by juvenile gang problems, like all major American cities. I worked with their gang officers, particularly in relation to the Samoan youth, who like Australian Aboriginal people, experience disadvantage in white society. Lyndon Johnson correctly told America twenty-five years ago that crime and violence were bred by ignorance, slums, discrimination, poverty, disease and not enough jobs. Retired Police Chief Tony Bouzas (1990) puts it even more simply:

> Not all poor people are street criminals, but almost all street criminals are poor people.

In the United States, three factors have had an even greater impact on crime: drugs, guns and young people. Never was this more evident than in Los Angeles, particularly as I was there during the controversy surrounding the King incident.[1] I might dwell

---

[1]. On 3 March 1991, in Los Angeles, a black American, Rodney James King, was arrested after a high speed chase by members of the Los Angeles Police Department (LAPD). During this incident King was severely beaten by a number of police officers, using batons and electric "stun guns". The whole episode was video-taped by a passer-by, and the tape released to television audiences world-wide. It highlighted the use of force, racial and civil rights abuse, and brought into question the confrontational style of policing practised by the Los Angeles Police Force, particularly in low socioeconomic areas of the city. As a result, an Independent Commission inquired into the operations of the LAPD, the then Commissioner of Police, Darryl Gates, was suspended and subsequently retired, and sweeping changes to the administration of the police force have been recommended.

here a little on the style of policing, which is the most confrontational I have encountered. Technologically and operationally, the Los Angeles police are probably the best trained police in the world. However, in a report published in response to the King incident, the Review Board emphasised the need to develop community involvement. It observed:

> The Los Angeles Police Department has an organisational culture that emphasises crime control over crime prevention and that isolates the police from the communities and the people that they serve. With the full support of many, the LAPD insists on aggressive detection of major crimes and a rapid seven minute response time. This style of policing produces results, but does so at the risk of creating a siege mentality that alienates the officers from their community (Warren 1992, p. X10).

This is particularly relevant when dealing with juveniles.

Yet Los Angeles is responsible for one of the most innovative and effective youth/drug education programs I encountered; that is, the DARE (Drug and Alcohol Resistance Education) program. The program is introduced in the first year of primary school, as part of an overall health education program. It consists of sixteen one-hour lessons in each school year, with the emphasis on "saying no" to substance use which may harm the body. The message itself is delivered by a combination of teachers, uniformed police officers and health workers. The program is backed by corporate sponsorship, and supported in the schools by joint inter-agency programs involving the Ministers of Police, Health and Education. It is already in place in the Northern Territory, and is currently being considered in other Australian jurisdictions. In Los Angeles, the effects of the DARE program are now being felt on the first generations that have reached junior high school. The youth are gradually moving away from drug use; they are, however, unfortunately moving into organised selling, and the "Blood" and "Krip" gangs so vividly portrayed in movies like "New Jack City" are a chilling reality.

I worked with and tracked some of these gang members from the streets of Los Angeles, where gangs are involved in all-out wars, into the suburbs of Compton, where there is a bizarre "poster campaign" aimed at discouraging gang membership. Here, "Home Boys" use Ouzi machine guns and 9 millimetre pistols to settle arguments, or just "act out" the gun rules, and the police must "tool up" to combat irrational, immature and just plain stupid kids who kill innocent people in a new phenomenon called "drive-by shootings".

Children as young as eight and nine are involved in the organised crack cocaine sales; the schools ban pagers and mobile phones to discourage dealing. "Clock work Orange" has become a reality. I was introduced to a seventeen-year-old gang member in Compton who makes a small fortune selling crack through his "crew" and drives the latest Porsche. We say you need to talk esteem to kids. How can you talk esteem to this kid? He has nothing: no values, no future, but he has got esteem in the eyes of his peer group. He epitomises what these young people aspire to. They know nothing else, and usually there is nothing else. His alternative is a ghetto life or $500 a month in the Boeing factory, if he is lucky.

These examples are just a snapshot, but all major cities are now seeing these trends emerge. Los Angeles is unusual, however, and just 15 km down the road in the area

covered by the LA County Sheriff's Department, you see the more prevalent system of juvenile policing.

In Canada, France and the United Kingdom it is being recognised that unless we begin to tackle the causes, so-called wars on crime can only deal with the results, so an ever-widening gap leading to alienation of certain sections within society occurs.

I will come back to that later, but let us look quickly at what the Americans are doing. They are certainly addressing problems on the four levels needed:

- education
- prevention
- diversion
- enforcement

In terms of the ranges of options, they are extreme: from informal warnings right through to the death penalty. In many states, young people are sentenced to adult prison at fourteen years of age.

I worked through programs such as Vision Quest, and the Buffalo Soldiers, and I must say that they impressed me, despite some poor publicity they received in Australia last year. The programs are long term (2-3 years), they appear to break the ghetto cycle, and they cost about half as much as incarceration.

In Tennessee they have had teachers, social workers and police working together in justice teams for the past eighteen years. One juvenile judge I spent time with was one of the most enlightened juvenile administrators I have met. This leads me into the idea of team work, particularly with juveniles. America in particular has recognised the importance of using the education system itself as an educative, preventative and diversionary tool. They have also had to put police in schools simply for the safety of those who study and work there. More importantly, they have recognised that you can utilise the school as an effective place in which to base joint projects aimed at prevention and diversion.

In ghetto areas, and Washington DC is a prime example, teams of police, social workers, teaching specialists and school psychologists work in "Attendance Centres" aimed not only at getting young people to school, but also aimed at sorting out those social problems that keep youth from dropping out of the main-stream into the gang structures or drug cultures. In New York, where I worked with their runaway units, police work closely with the equivalent of our Sydney or Perth City Missions: detectives and social workers. This is not a soft option. That unit probably gets more disclosures and arrests than any other operational youth unit. They talk to young people who tell them what really is happening.

It was refreshing talking to joint groups whose agenda did not get in the way of the main issue: the young people themselves. There seemed to be few barriers, and many of the prevention and education programs were jointly submitted and funded in such a way that the existing operational staff in various departments accessed funding together, rather than as an uncoordinated, poorly serviced community initiative.

The main emphasis generally, however, is now on education, prevention and diversion. The aim is to keep young people out of the formal juvenile justice system and to provide viable and sensible community based options, while at the same time utilising and maximising the input of all service deliverers, whether they be police,

children's services, health, courts, prisons, non-government bodies and others who impact on young people.

Police in many places overseas now act as catalysts for coming together to address youth issues and often take the lead in multi-agency teams. This is not to say that youth do not experience the full weight of the law; they do. For no matter what has caused their offending or how damaged they are by the society that has produced them, that same society is entitled to protection, and every child must at least realise the consequence of his or her actions. It is how you bring about this realisation that is the key!

I do not propose to examine at any length the Canadian or French systems. They are very similar in that they are now following the social prevention programs espoused in the Bonnemaison programs which have been well documented. Suffice to say that police in both countries play an integral part in the juvenile justice systems, working in partnership with all key players and taking ownership of the problem as a "whole of community" issue.

I suppose the real difference that I noticed between the American, and the French and Canadian systems was the reliance in America on privatised or non-government contracted services, as opposed to state or government agencies. This is the case in England, where a centralised government approach is very much the norm, and the principles of diversion from the juvenile system are paramount. I found this had become a weakness in the system. The absolute emphasis on diversion and the apparently desperate desire to keep children out of court denies the seriousness of persistent or recidivist offenders. Many English police that I spoke to voiced their concerns, and having had an opportunity to sit in on some of their juvenile justice programs I would agree.

There is a need to strike a balance between the needs of the child and the demands or needs of the ultimate victim, society itself.

This need for balance has been the catalyst for the deeply divided polarised debate that has marked the so-called juvenile crime problem in Western Australia. (Personally I believe it is a juvenile crime "reporting" problem.) As the meat in the sandwich, the Western Australian Police have begun to look towards adopting a balance between pro-active, preventative policing and the more traditional reactive style of policing, whilst learning from the American, English and French systems.

In doing so it is necessary to look at juveniles, or more properly the juvenile in terms of offending, on a series of levels dependent on their place in the scheme of things, or in accordance with the seriousness of their offending. Most juveniles will offend or test society; it is part of growing up. That period between ten and eighteen, particularly for males (and the vast majority of our offenders are young males) is a testing time. As Shakespeare put it:

> I would that there was no age between sixteen 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 ancientry, stealing, fighting. (*The Winter's Tale*, III.iii.59)

Unfortunately, some of these children are either so damaged by their environment, or so greatly disadvantaged, that this testing takes on a totally different aspect. Such juveniles will be found in that small group of persistent, anti-social and violent offenders. Almost all of the resources and certainly all of the publicity is aimed towards

this particular group. Sadly, in Western Australia it is often young male Aboriginal people who make up this group. Aboriginal youth are over-represented in the juvenile justice system, and are the most socially disadvantaged.

My observations last year brought home to me that we cannot generalise, but that we invariably do. We tend to lump all young offenders together, regardless of whether they are guilty of a minor offence, or a homicide.

In Western Australia we tend to deal with most juvenile offenders in the same way, through a punitive court system. As a Juvenile Division detective in Chicago commented, a by-product of such a system is the disempowerment of parents. Responsibility is taken from them and handed to the state. Unfortunately, the state rarely takes up this responsibility, and the system produces children who fail to learn from their mistakes, and parents who are made to look like failures. The irony of this is a society which demands that parents be made to take responsibility, yet also demands more and more legislation ensuring the expansion of punitive court systems.

How then do we break this cycle? Well over 60 per cent of offenders who come before our courts do so for minor matters, and usually appear on no more than two or three occasions during their juvenile years. The most common statistic is one appearance, usually for a minor traffic, social, or property theft offence. A further 24 per cent will waver on the edge of repeat offending, but by the time they are eighteen they will have worked their way out of the system.

This being the case, what has happened overseas is that the juvenile justice system has built in a series of filters, or "gateways", which recognise that group of young people who are testing the system. It also recognises those that will go deeper into the system no matter what. The gatekeepers provide the keys to making the system work.

At gateway 1, police and parents are the gatekeepers. They work with the victims and families. Parents take responsibility where appropriate, with the help of police.

Gateway 2 is for that child who comes again or is obviously exhibiting problems that need added support. It may also be that the parents need support. In this case, the gatekeepers are the police, parents and support agencies where appropriate.

The first two gateways are designed for the police to use in conjunction with the parents and the community. There is probably no need for referral to a court system; the statutory powers of police and the acceptance of this power by parents and victims allow them to deal with the offender.

Gateway 3 is the court, or pre-court programs run by the courts or a multi-agency team, where not only is support offered but sanctions can be and are applied. Gateway 3 is the use of the court system for those children who, because of their refusal to cooperate with the first two gateways, or their previous record, need the added weight of court orders or a threat of official penalties to ensure their completion of community programs and alternative solutions. It allows the court more flexibility, and also opens up the first gateways to those children who, because of legal reasons, such as pleas of not guilty, preclude themselves from the solutions offered by alternative programs.

Gateway 4 is the compulsory use of the court system, because of the seriousness of the offence (for example homicides, serious assaults, and offences of a sexual nature) or because of the nature of the offender (for example serious repeat offender or had refused on previous occasions to abide by sanctions imposed via the other gateways). Obviously this fourth option must always be there, with the police as the primary gate-keepers with significant decision-making role.

The rationale is obvious. Why use expensive formal and largely ineffective court systems, which take the responsibility from the youth and the parent, when in the vast majority of cases police-initiated, community-supported options will probably have a far quicker, far more effective and far cheaper result. This philosophy is not new, it is not a soft option, and most importantly it will demand that agencies work together, particularly in the planning of community and family responses. Finally, it will free up much needed funds to deal more effectively with that 16 per cent of kids who will frequent the juvenile justice system no matter who the gate-keepers are. We have parts of all gateways now established in Western Australia, despite the hype and the rhetoric. Nevertheless, there are no easy answers.

The second and final point I make is that we must begin to address those root causes of crime as the French and Canadian programs are now beginning to do so effectively. We, as police officers, can only deal with the results of those causes unless we act as the French do, in partnership with our community.

James J. Fyfe, a professor of justice, and former New York City Police lieutenant, described the American "wars on crime":

> The Lesson is plain. If (young) people have nothing to lose by committing violent crime, some are likely to prey on their neighbours, and occasionally on the rest of us. Acting on this lesson is far more difficult: if we are to deal with crime in the long term then we must ensure that people particularly in our inner cities have a stake in this society, that they have too much to lose to make crime a worthwhile proposition (*Honolulu Advertiser*, 21 March 1991).

This is a daunting challenge. It will require a sustained commitment that in this era of the quick fix will have few short-term political benefits for those who now determine our crime-control agenda. However, a politician or bureaucrat who ignores the causes of crime cannot credibly ask police officers to risk their lives to fight it.

Finally, we in Australia should stop dwelling on our failures. Serious young offenders are very much the minority, and we must not allow them to colour our view of the vast majority of young people that really are our future.

References

Bouzas, A. 1990, The Police Mystique; An Insider's look at Cops, Crime and the Criminal Justice System, Plenum Press, New York.

Fyfe, J.S. 1991, "Why won't crime stop", *Honolulu Advertiser*, 21 March.

Warren, C. (chair) 1992, *Report of the Independent Commission on the Los Angeles Police Department*, City of Los Angeles, California.

THE NYARS REPORT: THE POLICE

Rob White

ONE OF THE CENTRAL FINDINGS OF THE RECENT NATIONAL YOUTH AFFAIRS Research Scheme (NYARS) (1992) report on perceptions of the treatment of juveniles in the legal system was that 80 per cent of the young people interviewed had been stopped by the police: marginal young people and Aboriginal youth had an even higher rate of contact—over 95 per cent. The sample consisted mainly of sixteen and seventeen-year-olds, with roughly equal numbers of young women and young men as well as those from non-English speaking backgrounds. They were selected from three different locations (schools; shopping centres or malls; and youth hostels and youth service centres). Thus, the sample reflected a wide diversity of young people across a range of institutional settings.

This paper describes some of the findings of the chapter on police in the NYARS report. Given the extensive contact between police and young people, the concern of this part of the NYARS research project was to gain a sense of police perceptions of their work and the issues which they perceive as being the most important with regard to youth-police relations. For the study we undertook a survey of ninety police officers —thirty each from Queensland, Tasmania and Western Australia. We would like to express our thanks to the police departments in each of these states for their assistance and cooperation in the course of the project. Unfortunately, permission to interview officers was denied the researchers in Victoria.

For the purposes of the NYARS research it was important that the police themselves be given an opportunity to have their say on the many issues canvassed as part of the study. Following is a summary of the answers they provided to a series of interview questions. Interpretation and further analysis is beyond the scope of the present review, but it is hoped that the information presented herein will be of interest to the general reader.

General Findings

According to the officers interviewed only a small proportion (14 per cent) had had specific training in the areas of young people in conflict with the law, or young people at risk. A slightly higher percentage (23 per cent) had

completed some kind of in-service training on working with young people in general. However, the majority (77 per cent) of officers had no training in this specific area.

For over a third of the officers (37 per cent) young people make up more than half the people with whom they deal and for a further 32 per cent they make up between one-quarter and one-half.

Most contact between young people and the police is during the afternoon (50 per cent) and evening shifts (41 per cent), that is, during school hours and the periods shortly after, and in the early to middle parts of the night.

In terms of the locations where young people were thought by police to be of particular concern, the most frequently specified were malls (53 per cent of officers) and shopping centres (60 per cent of officers).

Three quarters of the officers singled out specific groups of young people as being more difficult to deal with than others: "street kids" were specified by almost half (47 per cent) of the police and almost 40 per cent nominated gangs. Aboriginal and Torres Strait Islander youth were the third most frequently specified group with almost a third (31 per cent) of officers nominating them. Queensland and West Australian police were more likely than Tasmanian police to specify Aboriginal youth and gangs as difficult to deal with.

Asked why they thought some young people were particularly difficult to deal with, 43 per cent of the police officers referred to general misbehaviour and lack of discipline, 13 per cent spoke of family problems such as lack of discipline and no control over offspring. A small number of officers made reference to cultural gaps between themselves and young people, particularly Aboriginal young people.

A series of questions explored the factors which influence police officers' decisions to deal informally with young people. The information provided in response established that administrative considerations (for example, the amount of paper work), the social background of the young people (for example, coming from a "good home") and aspects of the administration of criminal justice (for example court decisions and processes) are perceived by police as having little influence in their decision to deal formally or informally with young people.

The two factors which were considered by virtually all officers to be very important or crucial to their decision were the degree of cooperation shown by the young people (96 per cent), and the seriousness of the offence (97 per cent). Almost as many officers (89 per cent) also thought a young person's attitude was an important factor in their decision. In other words, police use of discretion is not only a product of the nature of the offence but is very much influenced by the nature of the direct interaction between young people and themselves.

In response to a question on the proportion of young people who have respect for authority and the police in general, 44 per cent of the officers replied that a few or very few did show such respect. However, 32 per cent felt that about half the young people did have respect for authority and for

the police, while a further 24 per cent thought that most or nearly all young people did respect the law and its officers.

Most of the police (98 per cent) said that they had been assaulted or harassed by young people in the course of their work. While close to half (46 per cent) of the officers who reported harassment said this happened "often" or "some of the time", just over half (55 per cent) reported that it happened "not very often" or "hardly ever". The kinds of harassment most commonly referred to included verbal taunts (73 per cent), being shouted at (68 per cent), and swearing (62 per cent). Fewer officers reported being assaulted with a weapon (16 per cent), having an object thrown at them (27 per cent) or being kicked (36 per cent), although a majority (52 per cent) did say that at some time they had been punched by a young person.

A large number of police (82 per cent) reported having to apply force to a young person at some stage. In almost every case, the officer explained that the use of such force was for self-defence or in response to resisting arrest. A small number of officers also responded by saying that they also applied force in order to restrain the young people from hurting themselves.

While usually denying personal involvement, a majority of the police officers (57 per cent) did agree that too much physical force was sometimes used in dealing with young people.

There was a wide variety of responses to the question regarding what each police officer believed was the main issues or problems in police-youth relations today. The two largest sets of responses related to the lack of respect by young people for the law, police and the courts (28 per cent), and the problems of communication between young people and the police (24 per cent), especially in relation to there not being enough time available for police officers to talk with young people in a non-threatening atmosphere. A further 16 per cent of police officers commented that problems stemmed from the lack of parental discipline and control over children. The officers also spoke of problems relating to the police force itself (9 per cent), including issues such as lack of police powers and training, and a lack of understanding by the police on how to handle situations involving young people.

There was similarly a wide range of responses to the question regarding what could be done to improve the relationship between young people and the police. The biggest response by far (33 per cent) was for further initiatives in the area of "community policing". Other officers focussed on parents as the main area where more work was needed, particularly with respect to discipline (13 per cent). Suggestions were also made regarding police work (13 per cent), with the main concerns being to ensure that the more experienced police officers deal with young people, and that police training relating to young people be offered and include such areas as interpersonal skills, listening skills and conflict resolution.

General Conclusions

What emerged from the study were a series of concerns which are specifically relevant to the behaviour and approaches adopted by the police in their relationship with young people. In summary form, these included:

- the need for police to reconsider the necessity for frequent stopping and questioning of young people;
- the problems posed for the longer term relationship between police and young people when physical and verbal intimidation is used by police during the investigation of offences;
- a general lack of clarity as to the actual rights of young people during questioning, and appropriate and suitable responses to the assertion of rights by young people;
- respect for rights, appropriate treatment and respect in the case of police interaction with marginal young people and Aboriginal and Torres Strait Islander young people;
- further development of community programs and more opportunities for more informal and relaxed interaction between young people and the police;
- the need for a mechanism, such as a youth ombudsman, which would have the dual functions of receiving complaints, and of proactively initiating inquiries into police/youth interactions over time and in particular locations;
- exploration of alternative dispute resolution strategies at the local neighbourhood level and the encouragement of dialogue between police and groups of young people; and
- specialist training and education for police officers so that they are better able to understand young people and so that they can develop the skills to work with young people.

Overall, the survey indicated strong support for more positive and ongoing involvement with young people in the police officer's day-to-day duties, and a recognition that a number of changes need to be made at the institutional and interactive levels.

References

Alder, C., O'Connor, I., Warner, K. & White, R. 1992, *Perceptions on the Treatment of Juveniles in the Legal System*, National Youth Affairs Research Scheme, National Clearinghouse for Youth Studies, Hobart.

POLICE CAUTIONING¾ EFFECTIVE DIVERSION OR EXPEDIENCE?

Ann Lewis and Clement O'Regan

IN QUEENSLAND, POLICE CAUTIONING HAS BEEN THE PRIMARY METHOD OF diversion of juvenile offenders from formal criminal justice processing since 1963. Cautioning programs have been introduced in various other Australian jurisdictions since this time. In excess of 11,000 juveniles, that is children between ten and seventeen years of age, were formally cautioned in Queensland in 1990-91 for a range of criminal and quasi-criminal offences.

This paper looks at the theory and practice of cautioning in Queensland.

Cautioning

Queensland Police Service internal instructions currently govern cautioning procedures. These instructions have been replicated in the *Juvenile Justice Act 1992*, which will be the legislative basis for administering cautions when the Act is proclaimed. The Act will only provide the outline of cautioning procedures. The details to a large extent will still be contained in police instructional material.

Prior to the Juvenile Justice Act the ability of police to caution, as opposed to proceeding against a person, is based in the common law discretion of police. This discretion allows police some degree of latitude in what action, if any, they take against a person who has committed an offence. There is much debate over the extent of this discretion and its probity. This discretionary authority has now been formalised in the Juvenile Justice Act. In practice, Queensland allows police to exercise this discretion in relation to juveniles between ten and seventeen years of age, soon to be eighteen years, with regard to all offences. However, the seriousness of the offence is a major consideration as to whether this discretion is exercised.

Normally, cautions are administered for the first offence which comes to police attention. However, if the offences are separated by time and the circumstances warrant it, the child may receive more than one caution.

Cautioning is a formal process, ordinarily carried out by Juvenile Aid Bureau officers who are specially trained in this procedure and the practices involved. Practice standards dictate that the caution should be carried out proximate in time to the offence, but normally not on the same day.

The caution can only be used where the juvenile admits the offence and the juvenile and the juvenile's parents accept that it is an alternative to court action. A caution takes between thirty and forty minutes to administer. It can only be administered in the presence of the child's parents or caregiver. The process usually involves a discussion about the offence and the caution with both the child and any accompanying caregivers. A separate discussion with the child and between parents and police then takes place. Finally, the parties are brought back together for the formal component of the caution. The Juvenile Justice Act adds a further step with the mandatory service of written notice of caution upon the child and parents.

The separate discussions with child and parents are primarily to identify any possible underlying factors (for example, physical or sexual abuse) which may have led to the offending behaviour. In this way, the caution is more than a simple exhortation to commit no further offences. It has a more pro-active element in investigating the reasons for the behaviour rather than the behaviour itself.

The fact that the child has been cautioned is recorded and this forms part of the official police record. The purpose of this report is twofold. First, it indicates that an offence has occurred and second, it records the statistical "clearance" of that offence. The juvenile is recorded on the police information system as having been cautioned for that particular offence. This means that if the child comes to notice again police have some record of that occurrence and can make an informed decision about what action should be taken against the child, if any. It also means that a child cannot be dealt with for the same offence twice, as the lodging of the offence report "writes off" the offence.

Despite the formal nature of a caution it is still sufficiently flexible to meet some of the diverse needs of offending children. The cautioning program takes into account the previous history of the young offender and the circumstances of the offence. A police officer may not be able to address all the problems being faced by the juvenile so the officer might refer the child on to a more appropriate person or agency. The cautioning process encourages any underlying problems facing the family and young offender to be addressed.

The personal distress and inconvenience to the victim caused by the juvenile is highlighted to ensure the offender understands the consequences of any criminal activity. Extensive efforts are made to reintegrate the young offender with his or her community. The Juvenile Justice Act provides an apology mechanism between victim and offender.

The cautioning program allows juveniles to come into contact with police in a more favourable environment, which in turn improves the relationship between police and young people in the community.

Informal Cautions

As already outlined, the basis for cautioning stems from the common law discretion of a constable. This discretion allows for a less formal cautioning procedure than the one described. Police can and do administer informal cautions for behaviour, particularly for street offences and minor traffic infringements. While technically constituting offences, these are most effectively dealt with at the time of the event and do not warrant further action. This type of caution is not recorded and normally would not involve the juveniles' parents. However, in appropriate cases, such as an intoxicated child, the child may be taken home and/or the parents contacted. Such cautions are not recorded and are administered "on the spot".

The Basis of Cautioning

Numerous studies have examined the nature of juvenile offending and have recommended that diversionary schemes, primarily cautioning programs, be implemented to prevent children entering the formal criminal justice process (Potas et al. 1990, Leivesley 1984, O'Connor & Sweetapple 1988, New South Wales. Standing Committee on Social Issues 1992, O'Connor 1992).

The alternative to a child being cautioned or otherwise diverted is for the child to appear before a children's court. This means that the child is charged by way of summons or arrested. In the latter case he or she is processed through a police watch-house, where she or he might be fingerprinted and photographed. This formal justice process is seen, therefore, as an over reaction to criminal behaviour, which in most cases is minor and property related.

Critics of court based responses believe that court appearances have a detrimental effect upon juveniles through the criminalisation of the child and the reinforcement of the wrongful behaviour. Diversionary schemes aim to avoid this effect.

The primary motive behind this response is the finding that most children grow out of crime. Children's recidivism rates are low in comparison with adult rates. Data on recidivist rates for juveniles coming to the notice of police is difficult to obtain, however, indications are that between 70 per cent and 85 per cent of juvenile offenders never come to notice again (Harrison 1992, O'Connor 1992, Leivesley 1984, Potas et al. 1990).

Another advantage of diversionary programs, as opposed to court appearances, is that courts by their nature are adversarial. Despite the best effort to make proceedings in the children's courts relatively informal, O'Connor and Sweetapple (1988) show that juveniles, their families and sometimes even practitioners lack a real understanding of the court and its procedures. On the other hand, the use of properly structured cautioning procedures enhances the juveniles' understanding of their offending behaviour and its consequences.

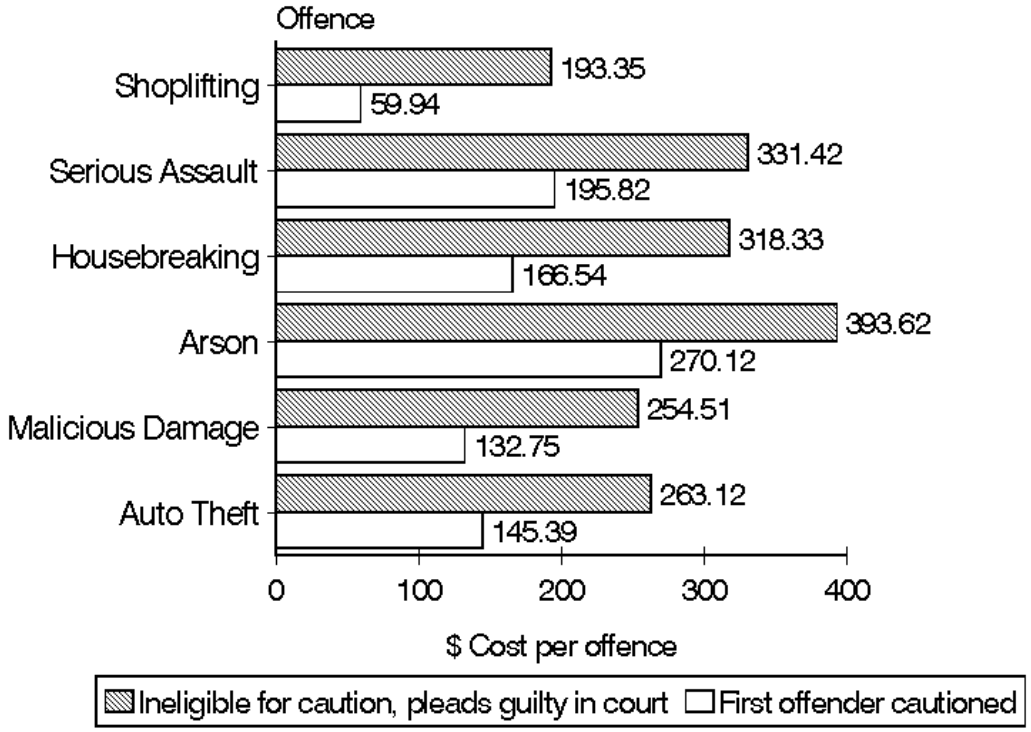
The important aspect here, though, is that cautioning allows the behaviour of the child to be examined, rather than the actual offence, as is required in the legalistic court process. As explained earlier, the officer

administering the caution is trained to look for indicators of other factors which will affect the child's behaviour and well-being, particularly those of abuse.

Another advantage of cautioning is that it is cheap. Potas et al. (1990) delineate the costs of dealing with juvenile offenders in Queensland. Figure 1 uses information from Potas et al.'s (1990) "Young People and Crime, Costs and Prevention" and gives some indications of the costs incurred by police in Queensland in dealing with juvenile offenders.

Figure 1

Estimated Cost to Queensland Police of Processing Selected Juvenile Offences, 1988



Data Source: Potas et al.1990

Figure 1 illustrates that cautioning is considerably cheaper than any type of court appearance. This finding reflects previously unquantified reasoning that cautioning is the most cost effective and expedient method of dealing with minor transitory juvenile crime.

Criticisms

A philosophical difficulty with the concept of cautioning is that the process is controlled by police, with little outside scrutiny. In Queensland in practice, it is the investigating officer who makes the decision about what action is taken in relation to a young offender. This in effect means that the police officer may be the investigator, the inquisitor and the arbiter who also determines the penalty which is to be imposed upon the child.

There is obvious scope for misuse by police of this discretion (like any other police discretion). The corollary to this position is that police who are correctly trained and who act ethically in accordance with the spirit of the principles of juvenile justice are in the best position to judge what action should be taken. Further, to change this process would require the imposition of another body, external to the police service, to examine and regulate the diversionary scheme. This might lead to the advantages of cautioning being undermined. An external regulator would need to take on a quasi-judicial function and appearance, to some extent counteracting the decriminalising benefits of cautioning over the courts. The additional costs imposed by the creation of such an infrastructure may be substantial and similarly erode the cost benefits of cautioning.

The Juvenile Justice Act addresses this issue in two ways, first by requiring police to consider the use of cautioning prior to taking action, and second by not making restitution a pre-condition to the giving of a caution as is currently the case under police general instructions. This statutory requirement still does not resolve the issue of police being the first and final arbiters on how a child is to be dealt with for a particular offence.

Another perceived difficulty with cautioning is that it is seen by some in the community as being a "wrist slapping" exercise. That is, the child is seen to have been let off lightly with a warning, without being punished, according to the way many adults conceive of punishment. This perception in many respects can be attributed to a general misunderstanding of the effectiveness of harsh penalties as a deterrent to criminal behaviour. It seems that the motive of revenge rather than correction holds more sway in the popular media.

Cautions reflect the expectations held by the community that although many young offenders will be diverted from the formal criminal justice system, they will still be held accountable for their actions. However, cautioning is not appropriate if the first offence is a serious one such as murder, rape or robbery with violence. The community in general considers it to be inappropriate for police to caution in these instances. Under the Juvenile Justice Bill, the wider range of sentencing orders will allow some flexibility in these matters.

Under the Juvenile Justice Act the police cautioning process will formally take into account cultural factors especially in relation to Aboriginal communities. The cautioning of Aboriginal offenders may be carried out by an Aboriginal elder if considered appropriate. This will also apply to other cultural and ethnic communities.

Prevention is Better than Cure

It is evident that cautioning is an effective sanction for first offenders in the vast majority of cases. However, cautioning is not the means by which appropriate interventions are facilitated for potential core group offenders prior to them becoming entrenched in the justice system.

In acknowledgment of special issues involving children, the Queensland Police Service has police who specialise in dealing with juveniles. The Juvenile Aid Bureau is a dedicated functional area dealing with juveniles. It is staffed by police who have a genuine interest in working and dealing with youth. Juvenile Aid Bureau personnel have greater experience and generally a more professional and sensitive relationship with children and youth. Programs have been developed which encourage positive youth/police interactions.

Research by Alder et al. (1992) indicates young people in Queensland and Western Australia are more involved with police-youth programs, such as blue-light discos, police youth clubs and school visits, than youth in Tasmania and Victoria.

Police regularly participate in activities with young people within their own communities. They are involved in their own time on a voluntary basis with programs such as Blue Light Discos, Neighbourhood Watch, Youth Clubs, Safety Houses, Adopt-a-Cop and other specific schemes within their regions.

The research by Alder et al. (1992) found that juveniles surveyed in Queensland were more likely than those surveyed in Tasmania, Victoria and Western Australia to report that their experiences if taken to a police station were positive. Queensland youth were the least likely groups to be held in police cells or to report mistreatment by police.

Police are involved in an extensive range of activities in their dealings with young people. Much of this contact with police is routine: taking complaints, providing general information, providing assistance and performing general police duties. Much of this contact is on an informal basis.

Community Policing

Community policing has been adopted by the Service as the preferred policing model in line with the Fitzgerald recommendations. Community policing at a local level, while improving police-community relations generally, also impacts on young people.

In recent times a conscious effort has been made by the Police Service to improve relations between police and young people. Communication avenues have been set up in many regions which assist in this process. These

forums are often a part of a "whole-of-community" approach to the problems being experienced by youth.

Work experience has allowed high school students to work within the police environment. This has resulted in better understanding, changed perceptions of police and a heightened interest in policing.

The Queensland Police-Citizens Youth Welfare Association, which is partially resourced by the Queensland Police Service but is community based and controlled, provides a network of facilities which service youth and provide activities for young people in general. It is presently attempting to focus its response on youth at risk. Its thirty-one clubs scattered throughout the state offer four different types of activity units which are directed primarily at young people:

- sport activities;
- recreational activities;
- youth and community assistance programs; and
- cultural/passive activities.

Activities include a youth diversion program where young offenders who have been cautioned by the Juvenile Aid Bureau are given the opportunity to attend adventure based training.

Conclusion

There has been a change of emphasis by the Queensland Police Service in recent times when developing policies and strategies for dealing with juvenile offenders. Improved police training will assist police to deal more sensitively with juveniles especially as the positive skills of recent training initiatives filter down to street level policing. Increased training has meant that personnel clearly understand their rights, duties and responsibilities concerning their dealings with juveniles. Practices have been introduced to ensure that the police response within the juvenile justice system is correct and non-discriminatory.

The Service has put in place internal administrative guidelines which reflect the changing philosophy for dealing with juvenile offenders. Arrest rates for juveniles are decreasing substantially. Instances where children are kept in custody for any length of time have also steadily declined.

The Service is committing more resources to crime prevention generally but more particularly to youth crime prevention. Diversionary strategies, like the cautioning process, are widely used to deal with appropriate offenders. The Service is relying to a far greater degree on community support and participation in this area. Community-based policing has become established and has shown that it can work for and not against Queensland youth; it will take time, confidence and perseverance for this philosophy to bear full fruit.

References

Alder, C., O'Connor, I., Warner, K. & White, R. 1992, *Perceptions of the treatment of juveniles in the legal system*, National Clearinghouse for Youth Studies, Hobart.

Harrison, B. 1992, "Full-time delinquents", *Police Reviews*, March 3, vol. 100, no. 5156.

Leivesley, S. 1984 (unpub), "Juvenile Aid Bureau, An evaluation of Police Work with Juveniles 1970-1983", Queensland Police Service, Brisbane.

New South Wales. Legislative Council Standing Committee on Social Issues 1992, *Juvenile Justice in New South Wales*, Report Number 4, The Committee, Sydney.

O'Connor, I. 1992, *Youth Crime and Justice in Queensland*, An Information and Issues Paper, Criminal Justice Commission, Brisbane.

O'Connor, I. & Sweetapple, P. 1988, *Children in Justice*, Longman Cheshire, Melbourne.

Potas, I., Vining, A. & Wilson, P. 1990, *Young people and crime: Costs and Prevention*, Australian Institute of Criminology, Canberra.

ABORIGINAL JUVENILES AND THE JUVENILE JUSTICE SYSTEM IN NEW SOUTH WALES[1]

Garth Luke and Chris Cunneen

THIS PAPER PRESENTS THE PRELIMINARY FINDINGS FROM AN ANALYSIS OF all court appearances and police cautions in New South Wales during 1990. In 83 per cent of these cases the authors have identified the Aboriginality of the accused and this has allowed the first analysis of the treatment of Aboriginal children at all stages of the criminal justice system in New South Wales. The aims of this paper are:

- to shine some light on the causes of over-representation of Aboriginal children in the New South Wales justice system; and
- to suggest some strategies to reduce this over-representation.

Background

The present study has grown from a lack of comprehensive information about how the police and courts deal with young Aboriginal people. Only one study, by Gale et al. (1990), has compared the treatment of Aboriginal and non-Aboriginal people throughout a justice system. That report used official data to look at all young people dealt with in South Australia during the early 1980s. The study also provides important methodological considerations in the study of over-representation.

The context in which the current research was developed was the fact that Aboriginal youth comprised around 25 per cent of juveniles held in New South Wales juvenile detention centres, and that it had been claimed that New South Wales had the highest rate for Aboriginal juvenile incarceration in Australia (Wootten 1989, p. 79). More recent research indicates that Western Australia exceeds New South Wales in the rate of Aboriginal juvenile detentions (Cunneen 1990, p. 15). However, the basic point concerning the

1. This research has been supported by a grant from the Criminology Research Council.

high level of over-representation of Aboriginal juveniles at the most serious end of the New South Wales juvenile justice system remains.

In New South Wales there have been valuable but limited insights into the treatment of Aboriginal juveniles by the criminal justice system (Chisholm 1984, Luke 1988, Cunneen & Robb 1987, Youth Justice Coalition 1990). Early research established that some communities in New South Wales have large numbers of Aboriginal youth appearing before the children's court for criminal matters and have relatively high rates of committals (Chisholm 1984, Luke 1988, Cunneen & Robb 1987). Chisholm's (1984) research indicated important differences in juvenile criminal charge patterns between different Aboriginal communities (Bourke and Nowra) and argued that one factor involved was the relationship of the particular Aboriginal community to the wider non-Aboriginal community.

There has also been some research which has indicated variations in the treatment of Aboriginal to non-Aboriginal youth. Cunneen (1988) indicated that Aboriginal youth in certain communities were least over-represented at the more informal stages of police intervention (cautioning) and most over-represented in formal processing through criminal charges. The Gale et al. (1990) work in South Australia also supports the view that Aboriginal youth are least over-represented in the least punitive stages of intervention and most over-represented at the point of committal to an institution.

However, the absence of Aboriginality in criminology data collections in New South Wales has prevented any detailed look at the whole system of juvenile justice to date. The result has been a lack of knowledge about differential treatment by the police and courts and the absence of planning and implementation tools for government. This study attempts to remedy this situation by identifying the Aboriginality of every young person who was formally dealt with by the New South Wales police in 1990 and then linking this information with criminal record and court and police outcome data.

The overall study has been planned in three stages. The first stage of the research identifies Aboriginal young offenders within the juvenile justice system for the particular twelve-month period (1990). The second stage analyses systematically the relevant factors within the juvenile justice system to test whether there are processes of discrimination operating, particularly in the light of high incarceration rates. The third stage identifies particular Aboriginal communities which have high rates of Aboriginal over-representation within the system, and analyses specific factors at a community level which might explain that over-representation.

This report reflects the preliminary results of stages one and two. While it is not possible at this stage to provide a detailed comparison of treatment at court and local government area level the current sample does provide valuable state-wide and regional insights and suggests a number of key foci for action to reduce the over-representation.

The Sample

There are two main sources of Aboriginal identity recorded in the official juvenile justice statistics in New South Wales. The first is the "racial identity"

field recorded on police crime intelligence forms and the second is the information collected by the Office of Juvenile Justice (OJJ, formerly Department of Family and Community Services) when children are dealt with by any of their services. Aboriginality is not regularly recorded by the court system.

The linking of this Aboriginality information with the Office of Juvenile Justice Children's Court Information System (CCIS) data was a first requirement. The CCIS maintains a range of information on all cautions and final court appearances for children in New South Wales and this is kept as part of a complete criminal record for each child. This allows analysis of outcomes on the basis of criminal record as well as on the more common demographic and current offence variables.

Name and date of birth form the basis of the linking but the use of different names, spellings and dates of birth as well as the need for many checks means that the process of identifying the Aboriginality of those on the CCIS is a particularly time-consuming process.

In the end it was possible to identify, using the official statistics, some 83 per cent of formal interventions (cautions and appearances) finalised during 1990. Cross-checking of the police and OJJ data revealed only about 5 per cent disagreement and helped validate the usefulness of the police data. The police information comes from a crime intelligence form which asks officers about the "racial appearance" of the alleged offender. While it may not be a useful measure for identifying different non-Aboriginal groups, the concurrence with the OJJ data (which is provided either by the child or by staff with a fairly detailed knowledge of the child's background) has led us to believe that the police information is a useful source of Aboriginal identifying information. Because of the greater likelihood of under-identifying the number of Aboriginal children, we have recorded a child as Aboriginal if either data source indicated this.

The 83 per cent sample probably slightly over-represents Aboriginal participation as the 17 per cent of unidentified interventions tend to be for lighter outcomes and those with shorter criminal records, but the large sample proportion means that the effect of this is likely to be small.

Overall Results

Aboriginal participation throughout the New South Wales juvenile justice system

Table 1 looks at key points of the juvenile justice system and shows the level of Aboriginal participation at each level in New South Wales during 1990.

Table 1

Aboriginal Participation, Juvenile Justice System, New South Wales 1990

	Aboriginal people as % of total
Aboriginal population 10-18 yrs	1.8
Police cautions	6.9
Total interventions (police cautions plus court app.)	15.3
Prosecutions by way of charge	17.4
Court appearances	16.5
Police bail refusals	23.1
Final bail refusals	21.6
Detention orders	27.2

As can be seen, Aboriginal children are over-represented in contacts with police and this over-representation increases as one passes further into the system.

The overall pattern is shown in all three major geographic areas, with country regions showing the highest participation rates.

Table 2

Juvenile Offenders, by Geographic Area and Aboriginal Participation, New South Wales, 1990

	Aboriginal people as % of total		
	Sydney	Newcastle/ Wollongong	Country
Police cautions	3.1	4.6	13.9
Total interventions	8.2	7.8	32.5
Court appearances	8.9	8.3	35.4
Prosecutions by way of charge	10.2	9.6	39.6
Police bail refusals	15.0	12.5	48.6
Final bail refusals	14.2	11.6	49.4
Detention orders	18.3	13.2	53.6

It is worth comparing these results with the South Australian data. The Gale et al. (1990) study covers the period 1979-84 and shows an even greater level of increasing participation by Aboriginal children as they pass through the system. While making up 1.2 per cent of the youth population in South Australia (1.8 per cent in NSW), Aboriginal children formed 7.8 per cent of total formal interventions (15.3 per cent in NSW) and 28.1 per cent of detention orders (27.2 per cent in NSW).

Gale et al. found that the major causes of the large increase in Aboriginal youth penetration of the system were the heavier criminal histories of Aboriginal children, the negative assessment by police of certain social

characteristics common amongst Aboriginal people (for example unemployment and one-parent families) and the reinforcement of negative police decisions by uncritical juvenile screening panels. They found little statistical evidence of "direct" discrimination in formal police interventions. However, their observational studies of police behaviour in Adelaide found that "case after case emerged which brought into question the equity of police treatment of Aboriginal youth at the point of apprehension" (Gale et al. 1990, p. 65).

Various studies have suggested other contributing causes including higher levels of offending (Walker 1987), high police numbers in areas of high Aboriginal population (Cunneen 1992), direct discrimination by the police and courts, and high levels of Aboriginal arrests for street offences.

In order to gain a clearer picture of which factors are at work in New South Wales it is necessary to compare the Aboriginal and non-Aboriginal accused populations.

A Comparison of Aboriginal and Non-Aboriginal Offenders

The following set of tables provides a summary of the characteristics of Aboriginal and non-Aboriginal children who were formally dealt with during 1990. The sample size is 15,415, made up of 1,866 cautions and 13,549 finalised court appearances.

Table 3

Juvenile Offenders by Gender and Aboriginality, New South Wales 1990

Sex	*non-Aboriginal (%)*	*Aboriginal (%)*
F	14.8	19.4
M	85.2	80.6
	100.0	100.0

Table 4

Juvenile Offenders by Age and Aboriginality, New South Wales 1990

Age	*non-Aboriginal (%)*	*Aboriginal (%)*
10	0.3	1.2
11	0.7	2.0
12	2.3	3.7
13	5.1	7.1
14	10.9	13.2
15	17.5	15.8
16	24.5	21.5
17	30.7	27.2
18 or more	8.0	8.3
	100.0	100.0

Table 5

Juvenile Offenders by Area of Residence and Aboriginality, New South Wales 1990

Area of residence	*non-Aboriginal (%)*	*Aboriginal (%)*
Sydney	59.8	29.5
Newcastle/Wollongong	16.4	7.6
Country NSW	23.8	63.0
	100.0	100.0

Table 6

Juvenile Offenders by Offence and Aboriginality, New South Wales 1990

Offences	*non-Aboriginal (%)*	*Aboriginal (%)*
Homicide/manslaughter	0.1	0.1
Armed robbery	0.3	0.1
Sexual assault	0.5	0.3
Drug trafficking	0.4	0.0
Unarmed robbery	0.4	0.4
Grievous assault/ malicious wound	6.1	7.1
Other assault	6.4	10.7
Break & enter	14.1	22.0
Steal M V/ carried in convey	11.1	8.8
Shoplifting	6.0	3.8
Other theft	32.5	25.3
Good order/ traffic/rail offences	17.5	19.9
Other drug offences	3.9	1.0
Other offences	0.8	0.5
	100.0	100.0

Table 7

Juvenile Offenders by Number of Previous Cautions and Aboriginality, New South Wales 1990

No. previous cautions	*non-Aboriginal (%)*	*Aboriginal (%)*
0	79.6	70.0
1	16.9	22.7
2	2.8	6.5
3-5	0.6	0.9
6 or more	0.1	0.0
	100.0	100.0

Table 8

Juvenile Offenders by Number of Previous Proven Court Appearances and Aboriginality, New South Wales 1990

No. previous proven court appearances	*non-Aboriginal (%)*	*Aboriginal (%)*
0	50.4	26.6
1	17.5	18.1
2	10.3	13.7
3-5	14.0	22.6
6 or more	7.9	19.0
	100.0	100.0

Table 9

Juvenile Offenders by Number of Previous Formal Interventions (i.e. Cautions or Proven Court Appearances) and Aboriginality, New South Wales 1990

No.	*non-Aboriginal (%)*	*Aboriginal (%)*
0	44.4	22.3
1	18.8	17.6
2	11.3	13.3
3-5	16.2	25.0
6 or more	9.3	21.9

Table 10

Juvenile Offenders, Percentage with Previous Institution History by Aboriginality, New South Wales 1990

non-Aboriginal (%)	*Aboriginal (%)*
9.2	21.3

(All the above comparisons show significant differences using the chi-square test at a 0.05 significance level.)

In summary, the population of Aboriginal offenders is much younger (43 per cent are 15 or younger), has a higher proportion of females, is much more rural, has much longer criminal records and higher rates of previous institutionalisation.

The pattern of offences is similar for the groups although the types of theft offences vary. It is noteworthy that, proportionally, the level of good order offences for Aboriginal people is only slightly higher than for non-Aboriginal people. Nonetheless, for both groups such offences are significant as almost one-fifth of interventions relate to these. Further, this data only records a single most serious offence for each appearance or caution and it may thus underestimate the use of multiple public order charges which has been highlighted by some studies.

A Comparison of Treatment at Different Points in the System

Police decisions

The data on participation rates indicate that Aboriginal children have a lower chance of receiving a formal caution than do non-Aboriginal people. They also have a higher chance of being charged rather than given a court attendance notice and have a higher likelihood of being refused bail.

Table 11

Juvenile Offenders by Type of Prosecution and Aboriginality, New South Wales 1990

	non-Aboriginal (%)	*Aboriginal (%)*
Per cent prosecuted by police	86.7	94.5
Per cent of prosecutions by way of charge	68.3	73.2
Per cent of prosecutions, bail refused by police	8.8	12.8

This could be due to overt police bias against Aboriginal children and/or due to differences in the offences, prior records, a range of social and economic characteristics such as unemployment, family structure or due to cultural and historical factors which might influence the behaviour of Aboriginal young people at the time of apprehension.

In order to shed some light on this, the following section focuses on those children who have no prior record of either court appearance or caution. The outcomes of police decisions for these "first offenders" are compared for Aboriginal and non-Aboriginal children, as is their area of residence and type of offence.

Overall, it was found that Aboriginal first offenders throughout New South Wales have a greater chance of being prosecuted by police and thus a lower chance of receiving a police caution. This is particularly so in country areas where two-thirds of Aboriginal interventions occur.

Table 12

Juvenile Offenders, Percentage of first Offenders prosecuted by Police, by Geographic Area and Aboriginality, New South Wales 1990

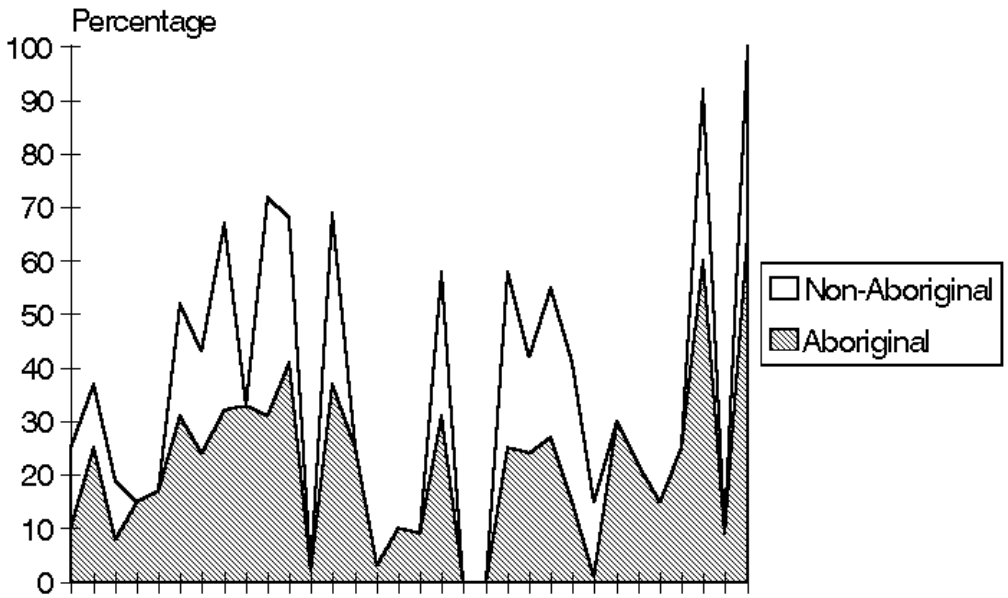
Area of residence	*non-Aboriginal (%)*	*Aboriginal (%)*
Sydney	77.0	84.6
Newcastle/Wollongong	70.6	75.0
Rural NSW	72.6	88.8
NSW overall	76.5	88.1

(Chi-square test - all are significant at the 0.05 level)

Figure 1 shows the percentage of first offenders cautioned in each local government area and highlights the differences between Aboriginal and non-Aboriginal caution rates. All areas with five or more Aboriginal cases are included.

Figure 1

Percentage of first Offenders cautioned in each Local Government Area, by Aboriginality, New South Wales 1990



This pattern of differential treatment is maintained when the offence type is held constant. For example, Table 13 shows outcomes for break and enter offences.

Table 13

Juvenile Offenders, Percentage of first Offenders prosecuted by Police for Break and Enter Offences, by Geographic Area and Aboriginality, New South Wales 1990

Area of residence	*non-Aboriginal (%)*	*Aboriginal (%)*
Sydney	83.3	83.9
Newcastle/Wollongong	75.0	81.8
Rural NSW	82.5	94.6
NSW overall	82.0	90.6

Similarly, the Aboriginal children who are prosecuted are more likely to be charged than simply given a court attendance notice or summons.

Table 14

Juvenile Offenders, Percentage of First Offender Prosecutions by Way of Charge (all Offences), by Geographic Area and Aboriginality, New South Wales 1990

Area of residence	*non-Aboriginal (%)*	*Aboriginal (%)*
Sydney	63.8	75.2
Newcastle/Wollongong	54.0	69.4
Rural NSW	47.0	54.3
NSW overall	58.4	63.1

(All the above comparisons show significant differences using chi-square with a 0.05 significance level)

Of those prosecuted, there seems to be less difference between the groups in the rates of bail refusal by the police. Perhaps this reflects the strong emphasis on avoiding police custody that has developed since the Royal Commission into Aboriginal Deaths in Custody began hearings.

Table 15

Juvenile Offenders, Percentage of First Offender Charges that were Bail refused by police (all offences), by Aboriginality, New South Wales 1990

Area of residence	*non-Aboriginal (%)*	*Aboriginal (%)*
Sydney	3.0	3.5
Newcastle/Wollongong	3.6	0.0
Rural NSW	2.4	5.5
NSW overall	3.0	4.6

(Chi-square = 3.45, $p > 0.05$)

These results show that Aboriginal children are more likely to receive harsher outcomes from the police at the apprehension and prosecution stages even when offence and criminal history differences are controlled for. The difference is not large for the state as a whole (for example overall Aboriginal people seem to have a 10-15 per cent greater chance of going to court when apprehended) but its compounding effect over time may be very powerful. The differential treatment by police may, as in South Australia, be due to social factors (which themselves may be associated with cultural differences) or due to the behaviour of Aboriginal children when apprehended. Whatever the cause it appears that the differential treatment is not based on appropriate criminal factors and that therefore some changes are necessary in police practices.

Court decisions

Overall, Aboriginal children definitely have a greater chance of being sent to an institution than do non-Aboriginal offenders appearing at court. Table 16 shows the magnitude of the difference.

Table 16

Juvenile Offenders, Percentage of all Court Appearances that result in a Detention Order, by Geographic Area and Aboriginality, New South Wales 1990

Area of residence	*non-Aboriginal (%)*	*Aboriginal (%)*
Sydney	5.8	13.4
Newcastle/Wollongong	5.4	9.0
Rural NSW	4.8	10.0
NSW overall	6.2	11.7

But when differences in criminal record are controlled for a very different picture emerges. In Table 17, the percentage given detention orders at each different level of criminal record is listed. There are no significant differences in the percentage given a detention order at any level of prior record.

Table 17

Juvenile Offenders, Percentage given Detention Order by Number of Previous Proven Appearances, by Aboriginality, New South Wales 1990

No. of prior appearances	*non-Aboriginal (%)*	*Aboriginal (%)*
0	0.6	0.7
1	2.2	3.0
2	5.8	7.4
3-5	14.0	14.3
6 or more	29.2	33.3

The courts appear to be treating Aboriginal and non-Aboriginal children with the same criminal history in much the same way. The high overall level of Aboriginal detention seems to be because of the large proportion of Aboriginal offenders with long criminal records. A further indicator of equity in treatment by the courts is found when one looks at community service orders (CSO). The CSO is specifically intended as an alternative to detention. If Aboriginal children are being treated equally by the courts then they should have the same chance of a CSO as non-Aboriginal children. As Table 18 demonstrates, Aboriginal and non-Aboriginal children incarcerated in 1990 were equally likely to have had a previous CSO.

Table 18

Juvenile Offenders, Percentage of those committed by Number of Previous CSOs, by Geographic Area and Aboriginality, New South Wales 1990

No. previous CSOs	*non-Aboriginal (%)*	*Aboriginal (%)*
0 previous CSO	65.6	61.3
1 previous CSO	26.9	30.7
2 or more previous CSOs	7.5	8.0
	100.0	100.0

(Chi-square = 6.93, $p > 0.05$)

Conclusion

The preliminary data implies that Aboriginal children are not directly discriminated against at the court level but that they do appear to have a lower chance of receiving police cautions and court attendance notices. This suggests that there should be a strong focus on improving equity at the police level. There appear to be three main ways of achieving this. The first is to reduce the discretion of police by establishing clear legislative rules for the use of cautions and court attendance notices. The second is to monitor police actions more closely and to feed this information back to managers so that they are better able to implement non-discriminatory policies.

As well as inequality in police practice this study also highlights the relatively low levels of cautioning and court attendance notice used for both Aboriginal people and non-Aboriginal people. The introduction of legislation which *requires*, rather than simply suggests, diversionary measures for young and minor offenders appears to be necessary for young offenders regardless of their Aboriginality.

In addition to these legislative and management changes which attempt to direct police behaviour, the provision of appropriate diversionary and support services can help to allay police concerns and provide them with less punitive options when dealing with Aboriginal offenders. As the Royal Commission into Aboriginal Deaths in Custody has recognised, these services are most likely to be effective if they are designed and run by local Aboriginal communities.

At the court level action is also required. While it seems that the courts generally treat both Aboriginal people and non-Aboriginal people equally on the basis of their criminal characteristics, this approach is not necessarily fair if Aboriginal children are more likely to have a criminal record generated by police discrimination. The differences in police response are not great, but their effects are magnified each time an Aboriginal child is dealt with by police.

Aboriginal first offenders have about a 15 per cent greater chance of going to court than do non-Aboriginal first offenders detected by the police. If we assume that approximately the same level of difference applies at the detection level (that is, in identifying an offender in the first place) then the compounding effect of this 15 per cent difference in likelihood could explain a large proportion of the significantly longer Aboriginal criminal records found amongst New South Wales Aboriginal offenders. In such circumstances, perhaps the definition of gaol as a last resort should place more emphasis on the seriousness of offence and less on the prior record of young offenders.

In closing, a final word needs to be said about monitoring and evaluation of any strategies developed. The problem of over-representation of Aboriginal people is one of the greatest issues facing the justice system. At this stage it is not possible to comprehensively monitor the effects on Aboriginal people as Aboriginality is not regularly recorded on New South Wales criminal justice data systems. The difficulty in linking police and court information implies that the point of collection is most suitably at the time of

court proceedings and should involve the person's assessment of their own cultural identification. Until this information is available we will be seriously restricting our ability to create a fairer system.

References

Chisholm, R. 1984 (unpub), "Aboriginal people and the Juvenile Justice System", Law School, University of New South Wales.

Cunneen, C. & Robb, T. 1987, *Criminal Justice in North West NSW*, NSW Bureau of Crime Statistics and Research, Sydney

Cunneen, C. 1988, "An evaluation of the juvenile cautioning system in NSW", Changes in the Direction of Juvenile Justice, *Proceedings of the Institute of Criminology*, no. 75, Sydney University Law School.

---------- 1990, *A Study of Aboriginal Juveniles and Police Violence*, Report Commissioned by the National Inquiry into Racist Violence, Human Rights and Equal Opportunity Commission, Sydney.

---------- 1992, "Policing and Aboriginal communities: is the concept of over-policing useful?", in *Aboriginal Perspectives on Criminal Justice*, ed. C. Cunneen, Monograph Series, no. 1, Sydney University Institute of Criminology, Sydney.

Gale, F., Bailey-Harris, R. & Wundersitz, J. 1990, *Aboriginal Youth and the Criminal Justice System*, Cambridge University Press, Melbourne.

Luke, G. 1988, *Aboriginal Young People in the NSW Criminal Justice System*, Juvenile Justice Unit, Department of Family and Community Services, Parramatta.

Walker, J. 1987, "Prison cells with revolving doors: a judicial or societal problem" in *Ivory Scales*, ed. K. Hazelhurst, UNSW Press, Kensington.

Wootten, H. 1989, *Report of the Inquiry into the Death of Malcolm Smith*, Royal Commission into Aboriginal Deaths in Custody, AGPS, Sydney.

Youth Justice Coalition 1990, *Kids in Justice: a blueprint for the 90s*, Youth Justice Coalition, Sydney.

ABORIGINAL YOUTH, POLICE AND THE JUVENILE JUSTICE SYSTEM IN WESTERN AUSTRALIA

Lynn Atkinson

THIS PAPER IS IN TWO PARTS. THE FIRST SECTION MAKES SOME observations about young people, crime and the police, and the particular vulnerability of Aboriginal youth coming to the attention of the police. Two issues, the maintenance of public order and juvenile offending, provide the framework for the discussion here. The second section looks at the nexus between the pre-trial conference—a recent innovation in the Children's Court in Perth—police prosecutors, and Aboriginal youth.

Policing Youth

The current high profile concerns about the criminality of today's youth are to some extent recycled concerns. They are more the product of the generation gap than of a particularly delinquent era. In his book *Sydney in Ferment* Peter Grabosky (1977) notes how the nineteenth-century so-called larrikin youth of Sydney enjoyed undermining symbols of privilege by walking around knocking the hats off the heads of members of the upper class. Mercedes and Rolls Royce owners who no longer sport emblems on their motor car bonnets, can probably empathise with their top-hat wearing ancestors.

The media, too, plays a powerful role in driving the law and order agenda and focussing public concerns on particular groups in the commmunity, rather than others. As Richard Eckersley (1992, p. 19) says, the mass media create "public images of issues that bear little resemblance to the private reality of those issues". In Western Australia in 1991 the coverage of the Royal Commission looking at the business activities of Government—the "W.A. Inc." Royal Commission—did not produce the same public demands for law and order and accountability as did issues of juvenile car theft and high-speed police pursuits, particularly those involving Aboriginal juveniles.

This is despite clear links between the business activities of the 1980s and the State's reduced financial circumstances, manifested in part by reductions in spending on social services and education, and despite the links between economic adversity and some types of offending. Law and order agenda tend to be driven by the powerful: politicians, newspaper proprietors and others. So to some extent, perceptions of a juvenile crime wave in the 1990s are produced by forces peripheral to juvenile offending.

While playing down the 1990s perceived criminality of youth, it is nevertheless clear that the policing of youth is becoming increasingly pervasive and omnipresent, particularly over the issue of young people's rights to frequent public space. Public space is not deemed to be the legitimate province of the young yet it is often the context for young people's leisure and entertainment. Young people are moved on by police in the interests of the adult community, which perceives youth as threatening their access to and enjoyment of public space.

In a submission to the Western Australian Select Committee on Youth Affairs, Step One Incorporated described how a group of young people in the inner city restaurant area of Perth, was approached by "at least ten different police officers" over a two-hour period (Select Committee 1992, p. 30). Although the young people were not being antisocial or disruptive, they were repeatedly questioned by the police and asked for their names. Researchers such as Alder (1992) and White (1992) indicate that all young people are vulnerable to this type of contact with police. Privilege no longer necessarily protects young people from this type of involvement with police, nor, it seems, from police heavy handedness which sometimes ensues from such incidents.

While all youth in public spaces are vulnerable to the social control role of the police, the circumstances of some groups make them more vulnerable than others. By virtue of their dispossession, amongst other factors, and their greater use of public space, Aboriginal and street youth are particularly exposed to this sort of police intervention in their lives. If young people feel harassed by police name-checking, the situation has the potential to escalate into one where charges are laid. Aboriginal youth, like their adult counterparts, are over-represented in good order offences. Crime Research Centre figures for 1990 show that 20 per cent of juveniles arrested for good order offences in Western Australia in 1990, and whose race was known, were Aboriginal (Broadhurst et al. 1991). Aboriginal youth comprise roughly 4 per cent of the youth population in Western Australia.

The numbers of Aboriginal youth arrested for good order offences give some indication of the exposure Aboriginal youth have to police intervention for the purpose of controlling public space. The picture does not change significantly if we look at other offence categories. Aboriginal youth in Western Australia are over-represented in offences against the person and in all property offences except fraud (Broadhurst et al. 1991). Aboriginal youth over-involvement in the juvenile justice system is predicated to some extent on their initial over-involvement with police. How do the actors concerned describe these interventions?

There has been a number of exposés in recent times of police violence towards Aboriginal people, young people included (Cunneen 1990; Equal Opportunity Commission 1990; Royal Commission into Aboriginal Deaths in Custody 1991). Alder et al. (1992) have pointed out that the more interactions with police, the more negative the perceptions. Aboriginal youth are over-represented in interactions with police, particularly those with negative consequences. Their attitudes to police were found by Alder et al. to be correspondingly negative.

Official police definitions of youth/police relations often differ from that of the client group. The Legislative Assembly Select Committee on Youth Affairs in Perth was told repeated stories of inappropriate, neglectful or abusive treatment of young people by police. The police version of the current state of relations, however, was, in the words of the Commissioner of Police, that "police-youth relations are good and improving all the time" (Select Committee 1992, p. 35). Police Unions traditionally reject accusations of police maltreatment of particular groups, citing the lack of hard evidence, the relatively few formal complaints which are made, and the rare official investigation which finds in favour of the complainant.

However, individual police officers will often admit to the existence of unorthodox or improper police behaviour, but attribute it, not surprisingly, to other officers, in other locations (Roberts et al. 1986). In his study of police perceptions of youth, White (1992) found that while most police surveyed did not recognise youth as a whole as presenting a particular policing problem, street kids, gangs and Aboriginal youth were singled out—in that order—as being difficult groups to deal with. Thus at some level, there is an acceptance by police that their relations with Aboriginal youth are indeed problematic.

There is much concern in Western Australia about Aboriginal youth involvement in motor vehicle theft, traffic accidents and fatalities which sometimes ensue, and high-speed police pursuits of offenders. The number of young people involved is comparatively small, compared with the more typical youth offences, mainly minor theft. Nevertheless Aboriginal over-involvement in apprehensions for car theft is extreme (Broadhurst et al. 1991). On the face of it, given the negative consequences for Aboriginal youth of their involvement with police, and their negative perceptions of police, it is ironical that many of these youths seek out an interaction with police in the form of a high-speed game of chase. This raises the question, why?

White (1990) and others see motor vehicle theft as an act engaged in by some young males who are denied participation in legitimate processes of establishing their masculinity. Many Aboriginal young men, particularly those living urban lifestyles, suffer disempowerment as youth, and like their non-Aboriginal peers, seek to transform this powerlessness in their adolescence.

As well as disempowerment as youth, however, Aboriginal youth, like their elders and like colonised people everywhere, also suffer cultural disempowerment (*see*, for example, Fanon 1970, on Algeria). One response to oppressive colonial systems is to subvert them. Aboriginal people, so omnipresently involved with the criminal justice system, know how to subvert that system; to derive different meanings for, and experiences of the

system from those originally intended. Our criminal justice system is intended to create fear, shame and conformity to mainstream norms in transgressors, via a system which punishes and deters. Aboriginal people have learnt how to shift the moral burden instead to those who police, try, and imprison them and to re-interpret their experiences of the criminal justice system to subvert those experiences and hence make them tolerable. By these means they gain some fleeting sense of power—however illusory and transitory this might be—over a system which is overwhelmingly stacked against them.

A few have written about how this manifests in practice. Marcia Langton (1988) has written about the provocative use by Aboriginal people of English swear words in the criminal justice context. Atkinson's (1990) study of Aboriginal women's imprisonment recounts how some Aboriginal women make choices as to the nature of their involvement with the criminal justice system, a system which, ironically, is posited on the notion of removing individual choice. Choosing to go to prison rather than pay a fine, as some of the women in the study did, can have an emasculating effect on the criminal justice system response as punitive and salutary. It can turn defeat for Aboriginal people by the system into some sort of victory.

But what of Aboriginal youth and their over-representation in motor vehicle theft by juveniles? Their apparently high participation in motor vehicle theft can be seen in part as a means of overcoming powerlessness. Provoking the police into high-speed car chases has the air of being an empowering act in itself, never mind whether the police are eventually outsmarted or not. If apprehended, there are ways of tolerating, and hence subverting, a system that is not intended to be tolerable. It is disturbing that these defacto means of achieving empowerment are inevitably and increasingly destructive, to self and others.

In his submission to the Select Committee on Youth Affairs, the Executive Officer of the Aboriginal Legal Service in Western Australia, Rob Riley, said that the youth involved in car theft and high-speed chases with police might "want to make society pay for what it has done to Aboriginal people or for the powerlessness of their own parents" (Select Committee 1992, p. 9). He also suggested that an offending lifestyle represented the norm for this group of young people: it is simply part of surviving in today's society.

Aboriginal youth, like their parents before them, have been barred from effective and articulate protest by colonialism and all that that concept implies: lack of education, racism, structural disadvantage. What better way then, to get back at one's oppressors than by subverting the values of an ethnocentric juvenile justice system which the dominant society holds dear? Whose shame is it that Aboriginal youth fill our detention centres? Who is afraid of whom in the potentially lethal rituals played out in fast cars by young Aboriginal people and police? How omnipotent is a juvenile justice system which apparently fails to stem the tide of Aboriginal youth flowing through it?

These questions resist categorical answers. However, it is difficult to produce answers which give us confidence in the impartiality of the juvenile justice system or its responsiveness to complex contemporary problems. It is

clear that policy makers and practitioners in the juvenile justice arena must find a different perspective when trying to understand and deal with offending Aboriginal youth. Not only police, but police in particular, are strategically placed to make some ameliorative contribution to reducing the numbers of Aboriginal youth passing through our juvenile justice system. The following section looks at one way in which the justice process is mediated by issues of race. The role of the police is highlighted.

The Pre-trial Conference and Questions of Race

In 1991 a research project into some aspects of the Children's Court in Western Australia was undertaken. It was part of a larger study, based in Adelaide, on the extent, costs and benefits of pre-trial negotiations in juvenile jurisdictions[1]. The Western Australian component looked at a particular aspect of the Children's Court in Western Australia, the pre-trial conference[2]. One of the areas of interest was the interrelationship between the pre-trial conference and Aboriginal defendants.

Overt deal-making involving concessions in return for guilty pleas is something most Australians associate with the American legal system. However, negotiations between the prosecution and defence also take place in Australian criminal jurisdictions (Douglas 1983, 1988; Bishop 1989; Wundersitz & Naffine 1990). These tend to be covert and generally involve charge bargaining.

The Perth Children's Court has introduced a procedure, the pre-trial conference, which is designed to encourage this sort of negotiation between the defence and the prosecution. If the young defendant has pleaded not guilty to any charges against him or her, s/he is remanded to appear at a pre-trial conference before a hearing date is set.

The idea of the pre-trial conference is to encourage efficient justice, mainly by minimising delays in court and in the lead time to trial, and reducing the number of trials collapsing at the last minute. The main purpose of the pre-trial conference is to confirm the plea and then set a trial date. While not encouraging guilty pleas per se, the pre-trial conference endeavours to have the opposing parties make realistic assessments of the case, to exchange whatever information is appropriate to forming such an assessment and to create the conditions for a firm plea to be entered. On this basis, even if a plea of not guilty is maintained, it should minimise the chances of an eleventh-hour change of plea and the last minute collapse of the trial. Much cost and inconvenience is thereby avoided.

The pre-trial conference operates similarly to the remand court, despite its slightly misleading name. The actors in the pre-trial conference are the

---

1. The research was funded by an ARC grant awarded to Professor Fay Gale. The research team for the Western Australian project consisted of Fay Gale, Joy Wundersitz and Lynn Atkinson.

2. The research was presented as a paper at the 7th Annual Conference of the Australian and New Zealand Society of Criminology, Melbourne, 1991: "Juvenile Justice and the Pre-trial Conference".

magistrate, the police prosecutor, the defendant and his or her legal representative, and the court official who lists trials. Sometimes members of the defendant's family are also present.

Pre-trial conferences are scheduled for 9.00 a.m., that is, an hour before the usual court sitting time. If a defendant changes his or her plea to guilty at the pre-trial conference and the charges are minor, the matter might be proceeded with then and there. Otherwise the case will be remanded, perhaps to the remand court sitting later the same day.

Because the pre-trial conference is convened before the regular morning court the few defendants appearing do not have long to wait. If on bail, as most defendants are, they will have been bailed to appear at the pre-trial conference at 9.00 a.m. If a defendant fails to appear s/he is given a few hours grace before a bench warrant is issued. Often the defendant will make an appearance at the remand court later in the day, and the matter of setting a trial date will be dealt with in that forum. The procedure is more cumbersome in the remand court, and delays for defendants and their families are inevitable. Further, the remand court is not designed to encourage information exchange so guilty pleas in this context might tend to be more strategic than firm. When surveyed, police prosecutors in the Children's Court were negative about the pre-trial conference, their major criticism being that defendants frequently failed to appear. The prosecutors estimated very low appearance rates for the pre-trial conference. Three out of the four prosecutors believed appearances at the pre-trial conferences were as low as 25 per cent of the listed defendants. Police were dissatisfied in any case with the Children's Court and with what they saw as its slap-on-the-wrist response to juvenile crime, so the pre-trial conference and its apparent failure merely exacerbated their frustration and anger.

The police believed non-appearances by bailed defendants at the pre-trial conference should be met with the immediate issuing of a bench warrant, to inculcate respect for the law. Instead, young defendants were allowed to turn up later at the remand court, despite having been bailed only to 9.00 a.m. For this technical breach the only penalty was a longer wait for their case to be dealt with.

Our observations at the pre-trial conference contrasted with police perceptions of appearance rates. It was found that 59 per cent of the defendants in fact made their scheduled appearance—more than double the number estimated by police. The appearance rate rose to 94 per cent when later appearances at the remand court the same day were considered. The police had seriously under-estimated the appearance rates of defendants and had painted a much more negative scenario of young people's compliance with legal requirements than was warranted. Further, they seemed to have judged the pre-trial conference on its capacity to enforce obedience before the law, rather than on whether it achieved its stated aims of efficiency. On this basis it was found to be sorely wanting.

After observing the pre-trial conference it became clear that Aboriginal clients and lawyers from the Aboriginal Legal Service (ALS) made fewer appearances than one might expect. Not surprisingly, the prosecutors had

also detected this. They sometimes expressed their frustration about the non-appearances in off-the-record comments.

Observations of the pre-trial conference over three months included four weeks when all pre-trial conferences convened in the Perth Children's Court were observed. In this period of intensive observations, sixty-six defendants were listed to appear. Ten were Aboriginal. Only one Aboriginal defendant made an appearance at the pre-trial conference compared with thirty-six of the fifty-six non-Aboriginal defendants. However, a further eight Aboriginal defendants took advantage of the "second-chance" provisions in the system and made an appearance at the remand court later in the morning. Only one Aboriginal defendant failed to appear at all. Of those listed to appear 90 per cent of Aboriginal defendants and 95 per cent of non-Aboriginal defendants made an appearance on the due day. However, only 30 per cent of non-Aboriginal defendants, compared with 80 per cent of Aboriginal defendants, appeared at the remand court, rather than the earlier pre-trial conference.

Police prosecutors believed the pre-trial conference was a failure because of their misconception that a majority of young defendants were failing to appear. It was true, however, that a majority of Aboriginal youth did not appear at the pre-trial conference, at least in the time we observed its operations. The Aboriginal youths provided the vehicle for police censure, not only towards them as a group, but to youth in general. Non-attending or late, and hence often technically in breach of bail, Aboriginal youth provided a ready and traditional focus for police anger and dissatisfaction with the whole system.

The study also found that the Aboriginal Legal Service placed little store on attending the pre-trial conference. This was partly for logistical reasons and partly because the ALS found the pre-trial conference ineffective as a vehicle for pre-trial negotiations. If the ALS gives scant priority to attending the pre-trial conference, it follows that its clients are unlikely to either. However, there are probably other variables influencing Aboriginal attendance. The efficiency of the pre-trial conference appeals to certain groups of people. School students and employed youth would benefit from its streamlined operations. Aboriginal youth offenders are seldom employed or attending school regularly. One Western Australian study found that 86 per cent of the detained Aboriginal youth population had been unemployed and not attending school before their incarceration (Walsh 1991). Small wonder then, that Aboriginal youth are not drawn to this efficient early morning procedure.

Reforms which are equitable for different groups are as necessary to fair justice as they are difficult to design and implement. The second chance arrangement built into the pre-trial conference, a procedure vilified by the police prosecutors, in fact has an important defacto role in redressing some of the problems of systemic imbalance.

Conclusion

What are some of the issues arising from the pre-trial conference study in relation to the policing of Aboriginal youth? Because of practical, cultural,

political or lifestyle considerations, Aboriginal clients of the juvenile justice system might fail to fulfil some of their obligations to the system. Failing to imbue the pre-trial conference with a useful purpose and hence neglecting to appear before it is an example of this. In their apparent lack of respect for the letter of the law, Aboriginal youth provide a ready vehicle for reinforcing police stereotypes and condemnation of them.

With the exception of the senior prosecuting sergeant, the police prosecutors at the Children's Court were mostly there for the short term and under sufferance. Police prosecutors undergo training on the job. As part of this training they are rotated through a variety of courts, including the Children's Court, every few months. No special expertise or knowledge of the juvenile justice system is required for prosecuting in the juvenile jurisdiction. In fact, time served in the Children's Court is viewed as helpful work experience in preparation for the important task of prosecuting in the adult jurisdiction.

The juvenile justice system is underpinned by the idea that most youth mature out of crime, and that, while still being held responsible for their actions, as minors their responsibility under the law is mitigated by age. Accordingly, more lenient penalties apply for juvenile offenders. Because police prosecutors have no particular understanding of, or allegiance to, the Children's Court, it is not surprising that they are disenchanted with the system. Currently, police prosecutors compare the juvenile scale of penalties with those applicable in the adult court and find them to be grossly inadequate. Hence the Children's Court becomes a fertile ground for complaints and the perpetuation of negative and racist stereotypes. A special juvenile prosecuting unit, with prosecutors trained in youth and Aboriginal affairs and the philosophy and practice of the juvenile justice system, might act as a countervailing force to the present law and order focus of the police in the Children's Court.

The pre-trial conference, as a court-based procedure, is situated in the second half of a young person's journey through the system. Having been dealt with by police, been found unsuitable for pre-court diversion and made at least one appearance in court on the matter at hand, only arbitration and sentencing remain. The over-representation of Aboriginal youth in the juvenile justice system increases as their penetration into the system deepens. Because of this, the pre-trial conference could be poised unwittingly to entrench further the over-representation of Aboriginal youth. However, in practice, its lack of appeal to Aboriginal youth is offset by the flexibility which creates second chances for Aboriginal youth. A change in police attitudes, structures and practices could further reduce the conflict between police and youth, particularly Aboriginal youth, and create an environment which encourages equity.

The pre-trial conference is a recent and relatively minor innovation in the Children's Court. It serves, however, to distil and reflect some of the ongoing conflicts which exist between the juvenile justice system, the police and Aboriginal youth. It also demonstrates how difficult it is to graft equitable reforms onto an inequitable system. Changes of perspective, an appreciation

of the issues, and changes to entrenched practices and structures are primary ingredients to long-term reform and fairer justice.

References

Alder, C. 1992, "The young people", *Perceptions of the treatment of juveniles in the legal system*, eds C. Alder, I. O'Connor, K. Warner & R. White, National Clearinghouse for Youth Studies, Hobart.

Alder, C., O'Connor, I., Warner, K. & White, R. 1992, *Perceptions of the treatment of juveniles in the legal system*, National Clearinghouse for Youth Studies, Hobart.

Atkinson, L. 1990, "They're So Nobody", A Study of Aboriginal Women's Imprisonment in Western Australia, Master of Arts thesis, University of Melbourne.

Bishop, J.B. 1989, *Prosecutions Without Trial*, Butterworths, Sydney.

Broadhurst, R.G., Ferrante, A.M. & Susilo, N.P. 1991, *Crime and Justice Statistics for Western Australia: 1990*, The University of Western Australia Crime Research Centre, Nedlands.

Cunneen, C. 1990, A Study of Aboriginal Juveniles and Police Violence, a report commissioned by the National Inquiry into Racist Violence.

Douglas, R. 1983, "Pre-trial withdrawals: trial, bargain or pseudo-bargain?", *The Australian and New Zealand Journal of Criminology*, vol. 16, p. 210.

Douglas, R. 1988, "Tolerated contests? Plea and sentence in the Victorian magistrate's courts", *Journal of Criminal Justice*, vol. 16, p. 269.

Eckersley, R. 1992, *Apocalypse? No! Youth and the Challenge to Change*, Australia's Commission for the Future, Carlton South.

Equal Opportunity Commission 1990, *Discrimination in Government Policies and Practices*, S.82(b) Report No. 8, Review of Police Practices, Main Report, Equal Opportunity Commission, Perth.

Fanon, F. 1970, *A Dying Colonialism*, Penguin, Harmondsworth.

Gale, F., Wundersitz, J. & Atkinson, L. 1991, "Juvenile justice and the pre-trial conference", Paper presented at the 7th Annual Conference of the Australian and New Zealand Society of Criminology, Melbourne.

Grabosky, P. N. 1977, *Sydney in Ferment: crime, dissent and official reaction 1788 to 1973*, Australian National University Press, Canberra.

Roberts, L., Chadbourne, R. & Murray, R. 1986, *Aboriginal/Police Relations in the Pilbara: A Study of Perceptions*, Special Cabinet Committee on Aboriginal/Police and Community Relations, Perth.

Royal Commission into Aboriginal Deaths in Custody 1991, *Regional Report of Inquiry into Individual Deaths in Custody in Western Australia*, vol. 1, AGPS, Canberra.

Select Committee into Youth Affairs 1992, *Youth and the Law*, Discussion Paper No. 3, Western Australia Legislative Assembly, Perth.

Walsh, Mr Justice (Chairperson) 1991, *Juvenile Justice: Summary and Introduction, Committee Response for the Premier, Initiatives in Programme Provision*, State Government Advisory Committee on Young Offenders, Western Australia.

White, R. 1990, *No Space of their Own*, University of Cambridge Press, Melbourne.

White, R. 1992, "The police", *Perceptions of the treatment of juveniles in the legal system*, eds C. Alder, I. O'Connor, K. Warner & R. White, National Clearinghouse for Youth Studies, Hobart.

Wundersitz, J. & Naffine, N. 1990, "Pre-trial negotiations in the Children's Court", *ANZ Journal of Sociology*, vol. 26, no. 3, November, pp. 329-50.

THE ROLE OF THE MEDIA IN THE JUVENILE JUSTICE DEBATE IN WESTERN AUSTRALIA

Charlotte Stockwell

The nature of bad news infects the teller. (Antony and Cleopatra I.ii.99)

OVER THE LAST TWO AND A HALF YEARS, THE MEDIA IN WESTERN Australia have significantly influenced one of the most important social policy debates in Australia—the administration of juvenile justice. Western Australia's citizens have been led to believe that they are a community under siege from young black men driving stolen cars. The sequence of events and the reporting of them is an integral part of understanding how Western Australia came to introduce the *Crime (Serious and Repeat Offenders) Sentencing Act 1992* in January. This paper explores that sequence of events with a view to assessing the impact that media reporting had on shaping public opinion and government policy. The role of non-government agencies is also discussed.

This paper is based on the contention that media reporting and specifically Howard Sattler's talkback program on radio station 6PR was significantly influential in arousing hostility towards young offenders. Racism has long been endemic in Western Australia and was readily aroused to public fury. The catalyst was a particularly tragic incident in which a young pregnant mother and her child died. A public aroused by a demagogue to fury of frightening dimensions panicked the Western Australian Government, which responded by introducing poorly framed, racist legislation which contravenes the Convention on Human Rights, the Convention on the Rights of the Child, the International Convention on Civil and Political Rights and possibly the *Racial Discrimination Act (1975)*.

The juvenile justice debate in Western Australia over the last two and half years has been characterised by intensely dramatic and emotive reporting, where criminality has become synonymous with Aboriginality. Individual events involving stolen cars, high-speed police chases and fatalities have assumed dimensions far beyond their actual significance while the nature of the debate itself has been to attribute blame to individuals for highly complex systemic problems.

Tom Wicker of *The New York Times* says that the media is constantly in search of "[a]ction, movement, new developments, surprises, sudden reversals . . . the ups and downs of fate, the cataclysms of nature, the perversities and follies of mankind . . . the search for drama and conflict" (in Mathews 1981, p. 2). There is little doubt that much of the reporting has been very dramatic. The participants in this debate have been cast in the role of either victim or villain. There were the tragic victims of accidents involving stolen cars driven by young people, while the rest of the community was classed as potential victim. The offenders were cast as thugs, hoodlums and louts, villains of the worst order, without feeling or conscience. People opposing the forces of "public opinion", as defined by some sections of the media, were also portrayed as villains: "do-gooders" and "bleeding hearts".

What follows is a brief description of the main events and how they were reported during the period in question. But before describing these events, a little scene-setting regarding the main media players may be helpful.

Western Australia has only one daily newspaper at present, *The West Australian*, although there was also another tabloid, the *Daily News*, in operation in 1990. This has since ceased operation. The *Sunday Times* is a weekly tabloid. Community newspapers providing very locally-specific news and distributed weekly are common throughout the State. Seventeen radio stations, including the ABC, a small number of community radio stations and a mix of commercial AM and FM stations, broadcast across the State. Radio station 6PR is a commercial radio station that is partially owned by the Totalisator Agency Board. Its audience falls mainly in the older age group where it dominates commercial ratings. Its morning radio host, Howard Sattler, runs a daily talkback show titled "The Sattler File". He is also a weekly contributor to the *Sunday Times*.

In the period between April 1990 and February 1992 there were ten car deaths in Western Australia in which juveniles driving stolen cars were involved. These deaths became the subject of intense media interest which peaked twice, the first time in July/August 1991 and again in late December 1991 and January/February 1992. In February 1990, one newspaper headline suggested that Aboriginal gangs were creating terror in the suburbs. The lead paragraph told of police fears that the "situation is getting out of control". Two days after the story appeared forty-five ABC journalists wrote to the editor of the paper to complain that:

> The story proper contained no hard news link to any event or alleged event of the preceding twenty-four hours. The "suburbs" turned out to be just three adjoining ones. Nobody identified as Aboriginal was quoted on the front page. The story reported allegations by police officers, and hoteliers and their staff. There was just one allegation detailed which involved a serious attack on a suburbanite in a street. Otherwise the article comprised general remarks by police officers and more specific allegations by persons involved in selling liquor. Alleged crimes at liquor outlets do not amount to terrorised suburbs (Mickler 1991, p. 4).

The letter was not published. Through investigation and interview, Steve Mickler, who worked with the Royal Commission into Aboriginal Deaths in Custody and researched media reporting of Aboriginal issues, established

that local police did not consider there was a substantial problem with juvenile crime, particularly Aboriginal juvenile crime, at the time of the report (Mickler 1991). In April 1990, the following events occurred:

- Longmore Detention Centre was heavily criticised by an Aboriginal police aide while giving evidence to the Royal Commission into Aboriginal Deaths in Custody;
- Richard Utting (a former president of the Criminal Law Association) heavily criticised high-speed police chases;
- a new cautioning system for juvenile offenders was announced; and
- the then minister for Community Services, Mr David Smith, said racist police practices were a leading cause of WA's high rate of juvenile incarceration (*The West Australian* 27 April 1990).

It was also in April 1990 that Mario Ambrosino, a prominent Perth businessman, was killed in a car accident involving juveniles in a stolen vehicle. Three of the young people were also killed. Howard Sattler described the deaths on air as "good riddance to bad rubbish". He went on to say "That's three less car thieves, I think. They're dead and I think that's good" (Transcript 4/4/91). When criticised for this statement, Sattler claimed the ethnicity of the dead children had not been known by the police at the time he made his comments. Mickler suggests that "Sattler did not need to identify the three dead children as Aboriginal, simply because the logic of the situation required that this was understood *a priori*. In Perth in this period, the image of "three kids in a stolen Commodore" presumes them to be Aboriginal unless stated otherwise" (Mickler 1992, p. 14).

In June 1991, Neville Wilson, a young man about to be married, was fatally injured in a car crash involving a juvenile in a stolen vehicle. Considerable media attention was given to his impending marriage and his fiance's grief. In July, the driver of the stolen car was sentenced to sixteen months imprisonment, a sentence similar to that received by other juveniles as well as being of a similar length to one an adult would serve. Howard Sattler then took on a leading role in orchestrating the protest campaign which lead to the Rally for Justice the following August.

Handbills and posters advertising the Rally for Justice began appearing in public places and thousands were distributed at an Australian Football League match in Perth. Young women in 6PR T-shirts handed out flyers in the main city mall. Numerous articles were published in the *Sunday Times* and to a lesser extent in *The West Australian* that promoted the rally. Howard Sattler played pre-taped promotions using Nigel Hanwell describing how he was hit by a stolen car driven by a juvenile and left lying by the road with his clothes on fire. It was the same juvenile who drove the car involved in the accident that killed Neville Wilson.

The media mood is perhaps best illustrated by excerpts from various articles published in the lead up to the rally.

7th August: *The West Australian*. Headline: "Get tough on young offenders: victim". The article is accompanied by a photograph of Nigel Hanwell on crutches with caption reading

> ROAD TO RECOVERY: Nigel Hanwell will never forget the nightmare of becoming a hit and run victim as he lay helpless watching his clothes burn.

11th August: the *Sunday Times*, Howard Sattler's column. Headline: "Govt ignores youth crime victims".

> The prospect of thousands of angry citizens protesting outside WA's Parliament House is certain to spark a series of government "initiatives" aimed at dousing the juvenile crime and punishment debate. None of them will go to the heart of the issue, which is the plight of the victim . . . Community Services Minister Eric Ripper already has produced a half-baked plan to address the mass use of amphetamines. It aims to smother offenders with treatment while they are incarcerated, but fails to say how it would curb their destructive habits when they are free and able to commit crimes. The minister's first salvo at the approaching forces of public opinion is a signal that more will be fired at the critics of the juvenile justice system in the next week. We can expect them to be laced with soft-soaping schemes pandering to the culprits and their hard-done-by families, who will each be excused for the havoc their errant offspring are wreaking on the law-abiding community.

18th August: the *Sunday Times*, Editorial. Headline: "WA's justice system on trial".

> At last the State Government seems to be getting the message: the public is fed up with the way WA's justice system works in favour of offenders and ignores the victims of crime . . . The depth of concern about juvenile crime is reflected in the growing interest in Tuesday's rally for crime victims. Unfortunately public confidence in the justice system has been seriously eroded. It will take a long time to restore.

18th August: the *Sunday Times*, Janet Wainwright. Headline: "Put the 'boot' into young thugs".

> It's a frightening world out there in suburban Perth with the increasing possibility that more of us will become the victims of juvenile criminals. While no-one—Government, Opposition or lobby groups—can have all the answers to the young hoodlums who make no apologies for taking out their aggression on the innocent, it is possibly the single biggest problem the Government faces.

18th August: the *Sunday Times*, Howard Sattler. Headline: "The victims are still angry".

> The State Government made good our predictions that it would announce a list of "initiatives" to defuse the juvenile crime victim's Rally for Justice on Tuesday. Its transparent attempt to address the crisis should not fool anyone . . . No more inquiries, no more committees, no more reports and no more procrastination, are what victims are demanding. Ambrosino, Wheeler, Steel, Rossi, Hanwell and Wilson are a handful of the hundreds of real people the politicians have sold out in their preoccupation with supporting society's juvenile misfits. Instead of waging a war of wills to discredit those supporting the Wilsons' protest,

> smart politicians and their advisers would have been better to adopt the victim's manifesto. On Tuesday at 1 pm, at Parliament House, they will be confronted with the folly of their ideological ignorance.

On 18 August, Leigh Houghton, a young mother, was killed in a crash involving juveniles in a stolen car.

The rally itself was held on 20 August and was the largest ever seen in Perth. It was widely covered by local print and electronic media, as well as by the press in the eastern States.

The West Australian's coverage was mixed. Its main headline read "Thousands share the anger at justice rally" while the article following described the more extreme elements of the crowd and the 6PR staffers in their 6PR T-shirts handing out petitions, as well as covering the various demands for changes to the juvenile justice system. Extensive pictorial coverage was given to the crowd, including photographs of a man holding a noose and placards reading "Hal Jackson: Public Enemy Number 1". There has been a long history of antagonism between Howard Sattler and Judge Hal Jackson, the President of the Western Australian Children's Court. Judge Jackson has refused to be available to Sattler after being attacked on air and Sattler has made a feature of criticising him ever since. Sattler also could not resist reiterating his attacks on "social workers, psychologists and do-gooders" when he spoke to the crowd at the rally.

An announcement that the Crown Prosecutor would be seeking a new sentencing standard for cases classed as manslaughter by motor vehicle did nothing to ease Howard Sattler's anger, especially after Judge Jackson publicly criticised the media's handling of the juvenile justice debate.

Juvenile crime continued to receive attention out of proportion to other events in the next few months. The debate continued to simmer until it exploded with the deaths of Margaret and Shane Blurton on Christmas night after a juvenile in a stolen vehicle had crashed into their car. There was extensive media coverage of the event for days on all electronic and print media. Peter Blurton, who survived the crash, provided bedside interviews to print and electronic media. Howard Sattler organised a candlelight vigil on 4 January at Parliament House. Television stations interviewed young people outside the Children's Court and community newspapers gave space to numerous calls for a return to capital punishment.

Ian Taylor, acting Premier, acted. He announced that "rehabilitation of hard core offenders who stole cars and committed violent crimes [would] no longer be the main priority" (*The West Australian* 6/1/92) and earned himself major headlines:

> "We'll lock them up" (the *Sunday Times* 5 January 1992).
>
> "Killer car thieves face 20 years gaol" (*The West Australian* 7 January 1992).

The State government had not only responded to an extremely tragic event but to a prolonged media campaign. The media were able to take advantage of a deep sense of personal fear and a substantial degree of prejudice and evoked public opinion rather than simply reflecting it. Its

response was in direct proportion to *perceived* public opinion. Dr Lawrence, the Premier of Western Australia clearly indicated this when she said:

> The tragic event on Christmas night, as I understand it, where a young pregnant woman and her child were killed on the roads—not the first time that it has happened in the state in recent months—really was a turning point for many people, not just for members of the Government but for many people in the community . . . And I think that the Government's decision reflects our desire to come to grips with rehabilitation of those repeat offenders, but most importantly the protections that people want, demand . . . and I think they've justly called for (*The West Australian* 8 January 1992).

The Government response on the one hand can be described as precipitate because of the indecent haste that characterised the introduction of the Crime (Serious and Repeat Offenders) Sentencing Act but on the other hand it was also the outcome of nearly two years of sustained media campaigning. By way of contrast, there were 181 road deaths in 1990. Three-quarters of drivers involved in fatal accidents after exceeding 0.08 blood alcohol content were over the age of thirty (Western Australia, Police Department 1990, pp. 19-21). There has been no similar rally nor comparable level of sustained interest in the carnage on our roads. Nor was there anything like the same level of interest in the NYARS report on young people as victims of violence that showed young males were more likely to be victims than any other group (Halstead 1992).

Furthermore, there is a possible relationship between the level of media interest in particular events and the encouraging of further offending by creating "local heroes", and engendering a self-fulfilling prophecy or copy-cat phenomenon. Research into the effect of the media on youth suicides indicates there is a relationship between media reporting and youth suicide. Western Australia reports showed a dramatic increase in the number of hangings in 1988 when the Royal Commission into Aboriginal Deaths in Custody commenced hearings in Western Australia (Silburn 1992, personal communication). The clustering of offending over the last eighteen months would suggest that this is an area which needs further examination.

It would be unfair not to report that *The West Australian* did also publish a number of positive stories about reformed juvenile offenders and community programs. But "good news" items are almost impossible subjects for follow-up stories, whereas the tragedies offer numerous opportunities such as funerals and court appearances.

In January 1992, nineteen-year-old Louis Johnson was bashed by two young people from a passing car while walking home from a party. He was left lying by the road. Moments later, some of the youths returned and deliberately ran over him at high speed. Louis Johnson died the next day. The driver of the car claimed that he hadn't meant to kill Louis—just break his legs. Why did he want to do this? Perhaps it had something to do with the fact that Louis Johnson was Aboriginal. In a taped confession to police the driver of the car confirmed that he had deliberately attacked Louis Johnson *because he was black*.

This event did not receive anything like the same level of media coverage as did any of the other preceding white deaths. Nor did Howard Sattler give this death any prominence on his show, claiming when criticised for this that his producer had been unable to contact, despite Herculean efforts, Louis Johnson's father. The Herculean efforts turned out to be two attempts to obtain Mr Johnson's phone number through Telecom's directory assistance (Mickler 1992, p. 65). Throughout this entire period, various organisations and individuals attempted to put an alternative point of view. WACOSS extensively reported on the legislation in the Council's magazine *WACOSS News* and provided copy to the ACOSS journal *Impact* as well as to other organisations in the Eastern States. The "wins" were limited—a sunset clause was introduced into the legislation, "Governor's pleasure" was removed, but only to be replaced with "Supreme Court", and a number of review processes were agreed to. But there was little that can be regarded as a major success. Why was this so? First, it is useful to look at the media response to young people in general. White describes it thus:

> In today's world, according to the mass media, merely to be "young" can be enough to betoken an incipient "criminality" and "deviancy" . . . In the 1980s the particular ways in which young people are rendered visible, due to high levels of unemployment and homelessness, coupled with increasing fears about the safety of one's property and person in the context of a depressed economic state, have fuelled media stories which are very selective in their highlighting of youth activities . . . The construction of a commonsense consensual view of society is "achieved" through continual processes of typification. Through these processes, what is "normal" and what is "deviant" becomes rationalised as everyday perceptions of the nature of social reality (White 1990, pp. 106-7).

Second, the nature of the debate itself acted to prevent any other view gaining credence or credibility. This is most evident in the way in which Howard Sattler controlled the issue on his morning talkback program.

A number of agencies, including WACOSS, were extremely alarmed at the direction the promotions for the Rally for Justice appeared to be taking and released a media statement calling for calm. However, the atmosphere of fear and violence became very disturbing indeed. WACOSS then prepared a media release calling for a more rational debate of the issues which was supported by over thirty youth organisations. The Council is well placed to take on a media role and it is in fact one of its main objectives. That media release was reported in *The West Australian* and was clearly identified as a WACOSS release. Howard Sattler, however, chose not to contact WACOSS about it and instead interviewed, on air, a less-skilled and experienced youth justice media performer than the WACOSS contact, and then proceeded to denigrate and belittle him. This is not an unusual tactic.

Talkback radio is not a spontaneous event. As Steve Mickler points out in his report, the show's producer examines that morning's paper and with the host decides what issues will be discussed. Some phone interviews are pre-arranged. When unsolicited calls come into the station, they are vetted by the producer who determines the topic and attitude that caller has. That information is then passed on to the show's host. It is not difficult to see that

the terms under which any matter is discussed are not equal. The show's host also has the advantage of technology. Incoming calls can be easily interrupted or terminated either through using the dump button or simply by finishing the call and the host, of course, always has the last word.

The casual nature of talkback radio also lends itself to a very informal news reporting style, where opinion becomes indistinguishable from fact through the language used to portray the event, as the following example demonstrates.

> When Sattler opens his program with the comment "The Federal government has decided *to throw another* [emphasis added] $150 million at Aboriginal legal aid services", we immediately know that any view to the effect that: a) Aboriginal legal services are doing a vital job; b) they are not wasting tax-payers" money; and c) the government should continue to fund them, are already positioned as discreditable (Mickler 1992, p. 17).

The vast majority of non-government organisations are ill-equipped to engage in public debate under these conditions. They are effectively set up to look foolish.

A student organisation and some community organisations decided to hold a rally to protest the proposed legislation in January 1992. This was perhaps not the wisest of strategies since it was inevitable that the rally would be unfavourably compared with the Rally for Justice. About 400 people met on the steps of Parliament House and listened to speakers talk about the consequences of the legislation.

Sattler invited comment about the rally in the following way:

> Sattler: Good morning and thanks for joining us. Radio Raw Sewage, that's the tag this program copped at a weekend rally of social workers, do-gooders, fringe group members and defected [sic] Labor Party politicians. A meeting that attracted a mere 400 people. That meeting, that group, wants the government to reject the demands of 30,000 people who attended the same Parliament House venue on behalf of the victims of juvenile crime and also to reject the wishes of over 12,000 people who attended a candle lit vigil around the end of the year. One accuser, and one of the organisers of the original rally, will join me shortly, later you might like to comment on their discussion (in Mickler 1992, p. 20).

A further rally of Aboriginal people and others was held on the day the legislation was passed through Parliament on 7 February.

What follows went to air as part of 6PR's Breakfast Show. After listening to this it is a wonder that anyone with a different opinion from Sattler's could even consider there was any value in agreeing to speak with him on air.

Announcer:	Let's eavesdrop now on the Anti-Rally for Justice Rally.
Ist man:	Gee, it's a good turn out, ain't it?
2nd man:	Ah, yes, if we get any more we may have to book another phone box.
1st man:	Let's move up to Parliament House.
2nd man:	Good idea, that way the crowd can have a snooze on the lawns while we try to think of reasons why juveniles shouldn't be sent to gaol for longer.

Woman:	Oh! Hello. Am I too early?
1st man:	No sister, you're late.
Woman:	Oh! They've all gone then?
1st man:	Nup, they never turned up in the first place.
Woman:	But I've prepared a speech.
2nd man:	Oh good, prattle it off, there's nothing else happening around here.
Woman:	We are gathered here today . . .
2nd man:	Umm. Gathered here is a bit rich love. Can't you say, we are loitered here today?
Woman:	. . . I cannot condone a government that locks up our young people for years!
Chorus:	Hear! Hear!
Woman:	. . . when all they need is a second chance.
2nd man:	Some have had over 200 chances already, how many more should they have?
3rd man:	Hey, move it out the way there bloke, crikey, sorry I'm late. Hey where's all the press? I wan'em to shoot my good side.
Woman:	Who are you?
3rd man:	I'm Mob Ruley, from the ALS, the Australian Looney Service. I'm here because I'm revolting.
Woman:	Have you tried changing your deodorant?
Mob Ruley:	Nah, nah, nah, nah, not that sort of revolting love. I'm 'ere because I'm revolting against the new laws.
2nd man:	And you've brought rent-a-mob with you. Thank God, we were starting to feel dismal.
Mob Ruley:	All deez people agree with me. The gubment is wrong!
4th man:	Oh ya right Mob! We do agree wid ya. See this building, we've got to knock it down because Waugle lives here!
Mob Ruley:	Nah, nah, nah, nah, nah, nah, nah, not this building. This is Parliament house. It's the Brewery we wanna knock down.
4th man:	What's the difference?
Mob Ruley:	Something good came out of the Brewery boy.
Woman:	But what are we going to do about juvenile crime?
Mob Ruley:	Cripes woman! We couldn't do much more than we already have. There's not that many cars left to steal ya know.
2nd man:	I say we should bring the government down.
Mob Ruley:	Nah, nah, they're doin a good enough job of that themselves boy.
Woman:	If these laws are passed we'll become the laughing stock of the United Nations.
Mob Ruley:	I agree, and we should appeal for help. I'll go and beg support from those great humanitarians Colonel Gaddafi and Saddam Hussein. Dear, dear, the United Nations. We wouldn't want to get them offside boy, hey, hey.
Announcer:	Oh no. Put the United Nations before the safety of the local community. Some people will never learn. That's all for Play House this week. (Mickler 1992, pp. 38-40)

Staff at the WACOSS office received threatening and abusive telephone calls, some of which asserted that the Council's Director had the blood of

dead children on her hands. Other callers asserted that it was all the fault of communists; that the only good Aborigines were "mission" Aborigines and that young Aboriginal offenders should be flogged "because they've got no feelings anyway" (telephone note). There seemed little doubt that the mood of many in the community was ugly and violent. The *Sunday Times* ran an article on WACOSS staff's concern about the personalising of the debate, but the only response was further abusive telephone calls.

In subsequent months the debate as conducted in the media has almost entirely centred around the possibility of Commonwealth intervention on the grounds that the legislation that arose out of the Christmas tragedy contravenes several UN conventions and possibly the *Racial Discrimination Act 1975*. Brian Burdekin, never a very popular figure with the Western Australia Government, took over the role of "villain" from Judge Jackson when he challenged the Western Australia Government over the legality of the legislation as well as a directive to police to harass potential offenders.

Personal denigration and abuse of any person who opposed the legislation from some media became almost commonplace but nonetheless extremely distressing. It is almost impossible for any individual or community organisation to take an action for defamation no matter how extreme the provocation. Quite simply, the financial cost and risk is too great. Complaints to regulatory bodies are often the only recourse available. Sattler's attacks on the children's court, child offenders, Aboriginal people and those who disagree with his own personal views have been the subject of at least one complaint to the Press Council. It did not succeed. Inevitably, this leads any organisation or individual to consider whether contact with that particular media personality or organisation should be continued. Sometimes it seems sensible to attempt to stay in the debate—after all if an alternative point of view is not put then it cannot be heard. At the same time, it is the responsibility of regulatory bodies to act on legitimate complaints such as those repeatedly made by Aboriginal groups. Non-government organisations are not usually experienced media performers: their main focus is on providing services rather than working with professional media.

Analysis and reasoned argument were conspicuously lacking in the majority of articles. When the question of violation of the Beijing Rules was introduced into the debate, Howard Sattler commented on air that he "didn't care what they did in China". Setting aside the conviction that many West Australians have that Western Australia is different from everywhere else, the poor understanding about human rights protections is very worrying. How can the community protect its basic civil and political rights if it does not know about them or recognise the importance of protecting them? Similarly, Sattler's calls for government to intervene in the courts reflects an abysmal understanding about the importance of keeping legislative, executive and judicial powers separate.

Blame for the crisis was laid at the feet of causes other than anything approaching the truth. Poor school and home discipline, an overly lenient juvenile justice system, no fault divorce, social workers, drug use and an absence of Christian values were blamed rather than poverty, unemployment, cultural alienation and racism.

Some members of the media consistently refused to examine its own role in the debate other than to deny any suggestion that it shaped rather than reflected public opinion. Criticism of the media was reported but never substantially addressed. The only media analysis of media coverage in Western Australia was in *X-Press Magazine*, a free weekly magazine aimed at a young audience.

> Truth is, death in teen-car-theft accident/chase happens so bloody infrequently that it's big, sensational news. What would happen if every rape of a woman, or domestic bashing of a child, every death of a junkie or black death in custody was headlined, video graphicked and banner-trumpeted by the nightly news? Would people march the streets? Do they? No. Those things are just too common. Still, nothing like a bout of media-fuelled hysteria. Followed, of course, by a quiet video about grown men racing big cars around the streets of American cities killing people . . . (*X-Press Magazine* 29 August 1991).

The greatest mistake of all would be to assume that the debate is finished. It is not. Waiting to react to the next crisis allows people like Howard Sattler to dictate the agenda. Although no-one has been charged under the new legislation yet, it is only a matter of time. A legal challenge at that time is highly likely, which will mean that the issue will once again become the focus of media attention. Those who oppose the legislation must be prepared for this and become better skilled at working with the media.

Regulatory bodies must be lobbied to ensure that they take seriously complaints about the ways in which Aboriginal people and Aboriginal issues are treated. Censure of those who gratuitously offend and who deliberately encourage racist attitudes must become certain through media regulatory bodies and through the introduction of legislation that outlaws racial vilification. Finally, the only bonus that has emerged from the last eighteen months has been the increasing sense of unity among very diverse groups.

The day-to-day work of informing the media about the work which community agencies do and the problems that their clients face must continue, but it is not enough. Having the information and being willing to pass it on is not enough. It cannot be absorbed by those who will not hear. Freedom of the press is based on freedom of speech, a concept itself based on the belief that the people have the right to choose how they will live their own lives. These freedoms themselves are based on the assumption that people will have the facts on which to make an informed decision. "Freedom of speech" is not absolute, because we know very well how much harm words can do—inciting violence, defamation, threatening, or creating the perception that someone else is not quite as worthy, even quite as human, as we are. Western Australia is an island on the edge of two oceans—the Indian and the Nullabor. Those who dominate the area of public information and debate have the power to make "truth" by creating and defining the terms of the decision-making process. The juvenile justice debate has been framed by propaganda, and the organs meant to guide and constrain the power of the media have been ineffective. The real tragedy is that the community groups were at first stunned, then slow to act together, and even now do not have a

plan of action which is independent of, or other than reactive to, a manufactured media "crisis".

References

Halstead, B. 1992, Young People as Victims of Violence, National Youth Affairs Research Scheme, Department of Education, University of Tasmania, Hobart. Lawrence, C. 1992, "People power won: Premier", *The West Australian*, 8 January.

Mathews, I. 1981, *How to Use the Media in Australia*, Penguin, Ringwood, Victoria.

Mickler, S. 1991, "Visions of disorder: media, police, Aboriginal youth and the politics of youth crime reporting", *Cultural Studies*, Routledge, London.

---------- 1992, *Gambling on the First Race*: *a comment on racism and talkback radio*, Louise St John Johnson Memorial Trust and Centre for Research in Culture and Communication, Murdoch University, Perth, Western Australia.

Sattler, H. 1991, "Govt Ignores Youth Crime Victims", The *Sunday Times*, 11 August.

---------- 1991, "The victims are still angry", The *Sunday Times*, 18 August.

Smith, D. 1990, "West's children most likely to face court", *The West Australian*, 27 April.

Sunday Times 1991, "WA's justice system on trial", 18 August.

Wainwright, J. 1991, "Put the 'boot' into young thugs", The *Sunday Times*" 18 August.

The West Australian 1991, "Get tough on young offenders", 7 August.

---------- 1991, "Threat to lives as youth gangs go on the rampage", 16 September.

Western Australia. Police Department 1990, *Road Traffic Crashes in Western Australia 1990*, WA Government Printer, Perth.

White, R. 1990, *No Space of Their Own: Young people and social control in Australia*, Cambridge University Press, Melbourne.

X-Press Magazine 1991, Editorial, 29 August.

FUTURE DIRECTIONS FOR GIRLS IN CUSTODY

Lynda Saville

GOVERNMENT SERVICES FOR YOUNG OFFENDERS HAVE HISTORICALLY centred around custodial and disciplinary models. New South Wales has had one of the highest incarceration rates of young offenders in Australia.

This paper explores many options that young women in custodial care in New South Wales have suggested as alternatives to increase their quality of life. The conclusion of this paper provides future directions that hopefully will be formulated into policy.

Background

Alternatives to incarceration

In 1985 New South Wales embarked on a Community Diversion Program after an initial pilot program. The focus was:

- To provide the courts with community alternatives to incarceration;
- To separate welfare services from court services dealing with young offenders.

Separation of Welfare Services from Young Offender Services

This issue was particularly pertinent to girls in custody in NSW, specifically because:

- Girls were more likely than boys to come before the court the first time for welfare reasons rather than facing criminal charges. Typically, a girl would be incarcerated for being "uncontrollable" and "exposed to moral danger".
- Girls who were state wards were more likely to be detained in custody than non-state wards;

- Girls who were state wards and living in community homes who became involved in disruptive behaviour were often reported to the police by staff responsible for their care and subsequently charged with an offence and transferred to a detention centre;

- These girls were less likely to meet bail conditions and therefore remained in detention;

- Research has demonstrated that girls who have been charged with criminal offences have a history of being abused (Women & Girls in Custody Group 1991).

After the separation

The separation of welfare from criminal matters is an attempt to avoid the courts processing welfare problems. The diversion program for girls focuses on workers:

- encouraging police to caution;

- encouraging District Officers to stop recommending the incarceration of girls either for minor criminal offences or welfare related issues;

- encouraging police, court prosecutors and magistrates not to set unrealistic bail conditions which cannot be met by girls in custody.

Community Based Support Workers

On 18 September 1984, Cabinet gave approval for the re-organisation of Juvenile Offender Services. The current program of community based support services is a result of this Cabinet initiative. Specifically, the services involve:

- Separation of welfare from criminal matters;
- Police cautioning procedures;
- Selective non-intervention by the Department;
- Recognisance order with/without supervision;
- Probation order with/without supervision;
- Community service order scheme;
- Railway reparation scheme;
- Community youth centre scheme.

In 1992 juvenile justice separated from the Department of Community Services and became a separate department known as the Office of Juvenile Justice.

Pre-release/community integration programs

Social workers working in juvenile justice centres initiated and developed pre-release programs in an attempt to facilitate the transition from Juvenile Justice Centres to community living. The focus of the Community Youth Centre (CYC) scheme was to provide intensive support for young offenders who joined the program after an initial assessment whilst in custody on a control (detention) order.

Juvenile justice officers also facilitate community re-integration by providing advice to administrative staff at juvenile justice centres including a home report. Magistrates are able to order a non-parole period after the initial period of incarceration. This non-parole time may be supervised by Juvenile Justice officers.

Action Research

Outcomes of offences

Juvenile justice officers working with young offenders in the Northern Region of New South Wales (Armidale, Lismore, Kempsey, Grafton and Tweed Heads) provided information, including the number of cases involving girls, during April May and June 1992, as well as information about offences and outcomes (*see* Table 1). Table 2 summarises information from a small sample of girls interviewed at Reiby Juvenile Justice Centre. The ages of the girls ranged from 14 to 18 years. The information includes offences and outcomes of offences.

As of July 1992, there were thirteen girls in custody in Reiby, twelve on control orders and one on remand. Most of the girls were under the influence of drugs at the time the offence occurred or were drug users generally.

Although there is a drug and alcohol worker employed by the Office of Juvenile Justice attached to Reiby, this person is not on the premises twenty-four hours a day. Because there is a legal mandate to detain these girls in custody they cannot be released into detoxification units in the community. Within the grounds of Reiby Juvenile Justice Centre, a unit needs to be established so that these girls (a large proportion) admitted can be cared for by staff trained in this area.

This would then satisfy the legal mandate and ensure that girls' lives are not placed at risk and youth workers are not placed in the position of providing care for which they are not trained.

Table 1

Outcomes of Offences, Offenders in Northern Region, April, May, June, 1992

Age	*Offence*	*Outcome*
13	Break Enter and Steal	Recognisance with Supervision
14	Break Enter and Steal	Recognisance with Supervision
14	Trespass—Fail to Appear	Dismissed
14	Malicious Damage, Resist Arrest Offensive Language	Probation with Supervision
14	Carried in Conveyance Stealing x 2	Recognisance
14	Shoplifting	Dismissed with Caution
14	Shoplifting	Dismissed with Caution
15	Assault	Community Service Order
15	Break, Enter and Steal	Probation with Supervision
15	Break, Enter and Steal Offensive Language	Probation with Supervision
15	Break, Enter and Steal Stealing, Offensive Language x 2	Probation with Supervision
15	Steal	Referred to Community Aid Panel
15	Shoplifting	Probation with Supervision
16	Assault x 3	CSO & Probation with Supervision
16	Common Assault	Probation with Supervision
16	Unlicensed, Steal Motor Vehicle, Stealing x 4	Probation with Supervision
16	Unlawfully Use Motor Vehicle	Probation with Supervision
16	Goods in Custody, Stealing	Recognisance with Supervision
16	Assault Beat and Illtreat	Probation with Supervision
16	Possession, Supply, Administer Prohibited Drug Possess Equipment	Probation with Supervision
17	Steal	Probation with Supervision
17	Break Enter and Steal	Community Service Order
17	Malicious Damage By Fire x 14	Incomplete
17	Unlicensed, Drive Under Influence Refuse Breath Analysis	Probation with Supervision
17	Assault x 2, Breach Apprehended Violence Order	50 hrs CSO Recognisance with supervision
17	Assault	Probation with Supervision
18	Assault	14 Days Control Order

Table 2

Outcomes of Offences, Offenders at Reiby Juvenile Justice Centre, 1992

Offence	*Outcome of Offence*
Malicious Wounding and Armed Robbery	3.5 years control and 18 months parole
Assault	3 months control
Assault and Drug offences	18 months control.
Assault	12 months control and 6 months CYC
Drug offences x 2	18 months control

Interviews with the girls at Reiby Juvenile Justice Centre Camp

All girls interviewed in Reiby Juvenile Justice Centre were on control orders and commented that they had had previous experience of community based sentencing options. Some had had previous control orders. Most girls interviewed also commented that their histories involved welfare intervention/s prior to becoming involved in the juvenile justice system.

The residents interviewed were asked questions focussing on the following issues:

- Separation of offenders, that is, separation of those on remand and those on control orders;
- Programs, pre-release and post-release services.

The responses varied, but a number of generalisations and conclusions can be drawn.

Programs for Girls in Reiby Juvenile Justice Centre Programs for residents on remand in custody are limited compared to programs that may be offered to girls serving control orders. Those girls on control orders felt that they were being disadvantaged because the unit had to restrict activities and programs for girls on remand.

The older girls felt they wanted to be separated from the younger residents. The older girls said that at times they found the behaviour of the younger girls irritating and annoying and at times this could lead to disruptive behaviour from the older girls.

The major issues raised by the residents concerning the programs are as follows.

Residents felt more options were needed. They felt strongly that residents should be empowered to make their own choices rather than adhering to choices made on their behalf by administrative officers or youth workers.

The issue of control and remand was re-emphasised, with girls commenting that residents on remand had different needs from those on control orders. That is, there are different needs for those in juvenile justice

centres for short-term stays and these different needs should be met through different programs.

The girls felt that they had limited recreational programs. The programs that were available were mainly "hobby type" programs as opposed to programs designed to teach skills necessary for independent living in the community.

The girls made several comments relating to the issue of different programs for girls and different programs for boys. Specifically, the girls were concerned that the boys had more choices available to them when it came to programs—the programs themselves involved more work or vocational skills and/or courses. The girls felt they needed vocational or work related skills and suggested programs/courses in computing and receptionist skills as examples.

Work experience was another issue of concern for the girls. The girls suggested that they would like to see work experience programs operating in juvenile justice centres similar to those in prisons. They reported that there were work experience programs in Reiby but "you don't get that until you're almost out".

The girls felt strongly about the need to include industry work as an option for residents at a negotiated rate of pay. They commented that this would enhance their self-esteem.

The need for broadly based skills training The residents made several comments about having limited skills and life chances. They felt they were stigmatised by the Commonwealth Employment Service if they held a criminal record and that there were very few specific programs at the CES oriented to young girls leaving detention centres. They commented that courses should be arranged while in detention centres and a link established for when they left so that they were able to move into a course immediately.

Alternatively, the girls suggested that courses should begin whilst on control orders and be completed after they had been released. Residents felt there was a need for a transition program to be developed to link residents into employment from juvenile justice centres. There was a need for more access into TAFE courses, particularly employment related courses. There were some courses available, for example, signwriting, child care and bricklaying, but the girls reported that the choices were limited and decisions about courses were made by administrative staff or youth workers. The girls felt that an assessment process was needed to determine which courses best suited residents.

Community integration

Some girls commented generally that no post-release service was desired, but for those residents on lengthy control orders post-release support may be necessary to facilitate re-integration into the community. The girls agreed that some support was available to residents after leaving juvenile justice centres. Knowledge of services was good, but "we don't use them, we just can't be bothered".

Girls stressed the need for residents to be given access to social security payments immediately after leaving in order to prevent re-offending. The residents also felt there was a need for a "halfway house" for young girls being released from lengthy control orders and that there should be support for young girls without family or for "street kids". They felt there was a need to have a "place to go and people to protect them".

Community Youth Centre (CYC) scheme

The girls stressed that more boys "get on CYC" than girls. Girls felt they were not released into early release programs like CYC because there was a perception amongst staff that girls would "stuff up before boys did" and "they don't give girls a proper chance". The girls commented that one of the reasons that young people "stuff up" on CYC programs is because "they have too many rules" and that CYC is too "competitive".

As of May 1992, in the three CYC Centres in NSW (city) there were nine girls attending this program. As of July 1992, there were seven girls in custody being assessed for suitability for inclusion on this program. Girls felt that they would like to see a pre-release centre in the juvenile justice system, similar to the Norma Parker model for women in the adult system, that facilitated transition into the community.

Recidivism

"New boys come in but its always the same girls that keep coming back". The girls felt they "kept coming back" because there was "nothing out there for them these days". They felt that one of the contributing factors was that "a lot more girls were abused than boys". They felt that youth workers and administrative staff needed to have more knowledge and training on the issues surrounding abuse.

The girls felt they needed trained counsellors to talk to. "We don't want to talk to youth workers, they don't understand". They felt strongly about the need for professional counsellors who have experience and training with working with young girls on issues such as sexual assault, violence, poverty and substance abuse. "We need people who understand and can empathise". The girls were concerned that substance abuse problems were not dealt with adequately inside juvenile justice centres. They felt that what was needed was a detoxification unit at the Juvenile Justice Centre, with qualified and trained staff to deal with drug related problems.

Staffing

Girls commented that staff should be rotated after about six months. They did not believe that consistency in staffing was the most efficient method of organisation. They felt that when staff remained for long periods staff and residents became too close. Separation then became a problem and "people who are too close always fight". There was also seen to be a problem with girls re-offending in order to return to resume a relationship with a youth worker or other staff member.

Girls felt strongly that they did not want the Juvenile Justice Centre staffed predominantly by women, as recommended by the Standing Committee on Social Issues report, *Juvenile Justice in NSW*. They felt this was not realistic—it did not reflect the real world. Girls commented that behaviour problems would be worse—girls were more competitive, more bitchy and emotional. They felt that they needed to have contact with men who were positive male role models as most had not had this experience.

What was needed were mixed centres and young offenders needed to be placed in centres closest to their home, not in one unit as is the case in NSW. When residents were not close to their home environments, the girls felt that they were disadvantaged because their families and friends were not able to visit and pre-release programs were difficult. Again, girls stressed the need to separate girls on remand from girls on control orders.

What is needed

The girls highlighted the following as areas that needed to be addressed:

- Need for a dietitian, changes in the food and combination of food. "Could learn and do our own cooking".
- Weight control program because "we go back to drugs when we get out to lose weight."
- Gymnasium, aerobics programs in order to prevent girls from feeling totally lethargic from doing nothing.
- More physical space, more choice of programs and things to do. Similar to Mt Penang model of programming with animal farm, etc.
- Computers.
- Garden (girls had a garden but it failed because there was no teacher available to show them what to do). Boys on the other hand who did have an instructor had a very successful garden.
- Legal officer, legal advice on a regular basis—"some girls don't even know what an appeal is."
- More programs that teach effective life skills, not just craft programs, for example, health and hygiene. A balance of the type of programs offered is needed.
- Regular dentist in order to facilitate dental hygiene and prevention of problems instead of involving a dentist when there is a problem.
- A female doctor.

Future Directions

This information, comments and suggestions provided by juvenile justice field workers and the female residents in Reiby Juvenile Justice Centre are important in terms of future directions in juvenile justice, especially regarding services provided for girls. The Standing Committee on Social Issues report, *Juvenile Justice in NSW,* has made a number of recommendations specifically related to girls in custody. Some of these recommendations have been endorsed by the sample of girls interviewed for this paper —others have been totally rejected.

The obvious point to be made here, and one that all who work with young girls would support, is that the young girls themselves need to be empowered to provide information and comments. This consultation is critical if we are to make an honest attempt to match programs and services to the needs of young girls. It is also critical in order to teach young girls skills that will enable them to regulate and take control over their own lives.

Transition programs

There is an urgent need to provide transition programs and support that will enable young girls in juvenile justice centres to make lifestyle changes that will allow them to return effectively to the community. Self-regulation and self-discipline skills are not acquired through some miraculous process of osmosis. They need to be taught. Young girls need to leave juvenile justice centres feeling more empowered, safe, confident and with skills that will enable them to make their own decisions and choices about employment, housing, lifestyle, and so on. The locus of control must shift from an external locus of control, that is, in the hands of administration, bureaucrats and youth workers to an internal locus of control, that is, the young girls themselves. While the locus of control remains external, young girls will only feel safe and in control of their lives whilst "inside".

While these girls are within juvenile justice centres they are not required or taught to make any decisions concerning their lifestyle. They are virtually powerless. It is not surprising then that when they leave our centres they fail, lose themselves, or re-offend, sometimes in order to return to the cocoon that has been created for them.

Pre-release programs

Connected to and related to the transition program is a pre-release program. There is value in administrators and bureaucrats considering some of the issues put forward by the sample of girls interviewed for this paper. Many young girls leave juvenile justice centres without the support of friends or a family of supportive adults they can trust. Some may feel that their plight is totally hopeless and helpless. Some have left totally dysfunctional home environments or a life on the streets. A halfway house would provide the support that is necessary for ex-residents to successfully find their rightful places in our society.

Substance abuse and the personal and social problems associated with this form of abuse are an enormous cost and burden to the young girls themselves, to families and to the wider community.

A detoxification unit within the grounds of the juvenile justice centres, operating as a separate unit from them is worthy of consideration. This unit must be staffed by trained and experienced personnel in order to assist young girls come to terms with and control their substance abuse and/or dependant lifestyles.

The current economic climate places added stress on the lives of young girls aged between fifteen and eighteen years. There needs to be more of a balance in terms of courses and programs offered to young girls while in custody. Programs and courses need to be of a practical and relevant nature that will better enable ex-offenders to live and work independently. A stronger link needs to be established between schools/TAFE colleges and industry to facilitate this effective transition. Paid work and pre-release programs such as the Norma Parker model offered to adult women prisoners in NSW, suggested by the girls at Reiby, should be an option explored further.

The notion of staff placed in offices of Social Security, CES and other government agencies to work with ex-offenders is worthy of consideration. These staff members would be trained and particularly sensitive to the needs of young offenders. Affirmative action and programs that allow positive discrimination in favour of young offenders similar to those that have been legislated for women and Aboriginal people in employment and housing for example, might be necessary in order to give these young people a fighting chance.

Conclusion

Many of the people who work in juvenile justice centres are committed people making an honest effort to care for and protect the young people in custody. Bureaucrats need to be reminded occasionally, however, that staff need to be supported in terms of staff to resident ratios, training and resources.

We must have faith in this nation's young people. They are, after all, our greatest natural resource. But society must allow these young people to be empowered through the acquisitions of skills and resources. Although at times this may seem very costly and labour intensive, it must be supported because without the expenditure in terms of time, money and energy early in young people's lives, society will be required to expend more money in the longer term either through supporting young people and their families on social security benefits or in correctional institutions. Young girls in juvenile justice centres must be guided, supported and empowered to become productive, independent and self-reliant members of our society.

References

New South Wales Women's Co-ordination Unit, June 1986, *Girls at Risk: Report of the "Girls in Care" Project*, Premier's Department, Sydney.

Parliament of NSW Legislative Council, Standing Committee on Social Issues 1992, Juvenile Justice in NSW Report No. 4, Parliament of NSW, Sydney.

Women and Girls in Custody Group, Sub Committee of NSW Prisons Coalition 1991, Girls in the Juvenile Justice System of NSW, Fact Sheet, Unpublished, Sydney.

Youth Justice Coalition 1990, *Kids in Justice: a blueprint for the 90*s, Youth Justice Coalition, Sydney.

SERVICES FOR YOUNG WOMEN ¾ FUTURE DIRECTIONS

Christine Alder

MANY YEARS AGO WHEN FIRST READING BOOKS ON JUVENILE delinquency, I made a note of the following comment (the source of which is unknown):

> The delinquent girl deeply violates the protective and caring attributes of her maternal role . . . the ultimate goal in the treatment of the delinquent girl should be her attainment of the capacity to become a good mother.

While disturbing, it is easy to think that such times have passed. Perhaps they have to some extent, but still prevalent are comments such as the following quotation provided by Jacki Bacon (1992) from a youth officer working with young women offenders:

> The girls in here, all they want to do when they get out is go and live with the boyfriend and have a baby. They don't want to study or get a career! They're not interested. If I can teach them how to cook and budget and look after themselves for when they leave here, then I reckon I've done my job well.

Of course there is some truth to the observation with which this comment begins. However, compare the above response to this observation with the first objective of Community Services Victoria's (CSV) policy document, *Becoming Stronger: An Action Plan for Young Women* which is to:

> Help young women become independent in ways which recognise the inequities which have shaped their development as children and young women and have impact on their ongoing opportunities for independent adulthood (Community Services Victoria 1992).

The first response, as a policy direction, entails a recognition of young women's current position and a focus on their adaptation to that situation. The second approach calls for us to challenge the processes and structures which limit the options available to young women and thereby their own

thoughts about themselves and their futures. This paper argues that it is the second approach which ought to provide the framework for future directions in policy developments for young women.

Young Women Speak Out

In a peer consultation process, young women were asked to comment on a draft of the *Becoming Stronger* document. When speaking of current services many of these young women spoke of "their major frustrations as being overprotection and lack of power" (Young People in Need Inc. 1992, p. 10). In supporting the thrust of the "Becoming Stronger" policy to enable young women to "take charge" of their lives, young women indicated they understood this to encompass "autonomy, independence, security and the ability to influence the design and operation of services". They identified the following as their most important needs in regard to CSV and CSV-funded services:

- To be less dependent on services
- The power and resources to influence services
- A more positive environment within services
- Secure long-term housing options
- Increased cultural sensitivity of services (Young People in Need Inc. 1992, p. 4)

These comments are consistent with findings in the United States that when young women in the juvenile justice system are asked about their most pressing needs, they will talk about their desperate need to find an economic means of independent survival (Chesney-Lind & Shelden 1992). What comes through very clearly and strongly from young women's comments is their need to be able to live independent lives, including independence from social services.

Special Concerns for Young Women

The overall objective for services for young women should be to facilitate young women being able to lead safe, secure and independent lives which provide them with a sense of personal worth, and participation in and being able to contribute to the society in which they live. Essential to this scenario is economic independence by virtue of paid, meaningful employment and long-term accommodation. These objectives would also apply to a policy for young men, so why do we need to address the needs of young women separately?

Firstly, the world with which they must negotiate is different for girls. Most importantly, in terms of the above objective, the work force is still segregated, which means that girls face a much narrower range of jobs, with inferior rates of pay, conditions, patterns of work and job security. Further,

the world of work poses particular threats to young women in terms of exploitation and sexual harassment. This has to be dealt with when assisting young women to enter the work force and in talking to employers and other organisations about preparing the work force for young women.

The attitude and approach to education of young women has been shaped in an environment that we have little evidence has changed substantially in terms of some fundamentally sexist assumptions about feminine behaviour and the opportunities that are available to young women.

Secondly, in order to achieve the above objective for young women, we have to overcome and challenge long-standing assumptions about femininity, and what it is to be a young woman, which are inconsistent with the objective in a way that they are not for young men.

One fundamental assumption of female dependence is that women's places are either in their homes of origin under the protection, guidance and control of their parents, or else in the assumed to be protective, caring arms of their husbands. We now know that neither of these situations necessarily provides a protective environment for young women. Most of the young women with whom we are dealing have left their homes because of abuse, and end up staying for varying periods with boyfriends who are one of the major potential sources of violence and abuse for them. Thus the objective of facilitating safe, independent living for young women, is particularly pressing, while at the same time it is particularly difficult to arrange because it challenges conventional notions of femininity.

Thirdly, when young women, particularly those who have been in care, are attempting to re-enter the conventional world, they have to face the consequences of an age-old assumption "When she was good, she was very, very good, and when she was bad she was horrid". When a boy has been "bad", it can to a certain extent be viewed as evidence of independence, a willingness to break out on his own, of character, an adventurer who has been willing take on the unknown. That is, to be bad is not altogether inconsistent with the expectations of masculinity. For a young woman however, society is less forgiving. Having been bad on one dimension can affect her reputation and standing as a young woman on a number of dimensions. Most clearly her moral and sexual standing are in question.

This is not a trifling matter for the young women concerned and yet we do not always deal with this problem head on with the young women themselves. We have to be aware of the consequences of this set of assumptions, and sensitive to them as we try to facilitate young women establishing themselves in a new world.

Fourthly, while young men and women in state care share a lot in common in terms of their previous home backgrounds and school and work experiences, there are some important differences that need to be recognised if we are to develop services that do allow young women to "Become Stronger". Most obvious of these is the area of sexual abuse. Current evidence suggests that young women in these situations may very well have been victims of sexual abuse. We need to recognise this, be sensitive to it, and provide young women with access to services and resources in order to deal with it if they so desire.

It is of concern, however, when services are made conditional (explicitly or implicitly) upon a young woman having had such experiences. It should not preoccupy our concerns in regard to young women. Some young women are sick of having to talk about these experiences, and some young women who do not want to talk about it, but believe it is obligatory, will avoid services. Some young women do not necessarily have to confront publicly these past problems before becoming stronger, some need to become stronger before they confront them, and for some other young women, simply becoming stronger (independent, resourceful, secure) deals with the problem for them.

Finally, there are far fewer young women than young men in our juvenile justice systems. In Victoria, young women comprise less than 10 per cent of CSV's population of supervised young offenders (Bacon 1992). This presents us with the challenge of ensuring that there is a sufficient range of services to meet the diversity of needs of this group of young women.

While some services will need to be available for young women only, we will also need to be developing services which meet the needs of both young women and young men. These situations will require that we prepare both the young women and the service for dealing with potential problems, particularly when the numbers of young women are significantly less than the numbers of young men using the service. In such situations, for example, we may have to deal very directly with ensuring that the young women have access to other young women, or a support group. We probably have a lot to learn in this area from those in the apprenticeship area who have done quite a bit of work on facilitating young women moving into non-traditional career paths.

That such options are worth pursuing despite the difficulties is evidenced by Jacki Bacon's (1992) finding in Victoria that the job retention rate was better for the young women in the Employment Access Program who were placed in non-traditional areas than those who were placed in unskilled positions.

What can we do?

Before deciding exactly what we can do, we have to be clear about our general approach to the issue of services for young women. It is important at this point to turn to the general objectives of CSV's policy for young women. In doing so this paper does not intend to imply that the policy is without problems, but rather that as a set of objectives it does herald an attempt at a new beginning in the way we think about policy directions for young women:

- Help young women become independent in ways which recognise the inequalities which have shaped their development as children and young women and have an impact on their ongoing opportunities for independent adulthood;

- Ensure safe environments for young women while they achieve greater independence and participation in their communities;
- Change those conditions (policies, service distribution, administrative and professional practices) which act to exclude young women from mainstream services and supports;
- Provide programs promoting personal and social growth and increasing young women's skills in controlling their experiences and utilising opportunities;
- Ensure that programs are accessible and relevant to the experiences of young women, particularly in terms of their geographic location and the way in which they are provided (Community Services Victoria 1992, p. 1).

To achieve these sorts of objectives we are going to have to work at a number of different levels, some of which have not traditionally been the focus of attention in thinking about programs and services for young women. For example, Action Area One in the "Becoming Stronger" document is titled "supporting broad social change for young women" and specifies areas for action such as "income security", and other departments such as "Education, Training and Employment". Most of the actions in this area entail not working with the individual women but with other government departments to review their policies.

In the current environment one of the issues we are going to have to keep on the front burner concerns young women's access to meaningful employment. As Bacon (1992) has observed from her work with the Employment Access Program, the task is not simply to find any job, but to work toward "quality outcomes": jobs with credentials, job satisfaction, career paths. For young women this means that we are going to have to work at opening up new areas of employment and job creation. This will also involve working with local employers and educational authorities. We can begin by recognising young women's skills and employing them. For example, CSV has employed a group of young women as a peer education group on sexual violence, and two young women were employed to survey other young women about their thoughts on the Young Women's Action Plan.

In conclusion, I would have to concur with Bacon (1992) when she observed that the recognition of the importance to young women offenders of credentialled education, accredited training, vocational planning and employment which leads to a career, is still a minority view. But if we are serious about assisting young women to move to real independence, to establish legitimate identities, to attain a meaningful role in the community, to have some choices about the direction and form of their lives, we have to look more closely at developing this aspect of our policies for young women in the future.

References

Bacon, J. 1992, "Loaded roulette: the employment and training jeopardy for young women offenders", in *The Way Out: The Role of Employment, Education and Training for Offenders in the Criminal Justice System*, ed P. Sirr, Conference Proceedings of Outcare, Perth.

Chesney-Lind, Meda & Shelden, Randall 1992, *Girls Delinquency and Juvenile Justice*, Brooks/Cole Publishing, Pacific Grove, California.

Community Services Victoria 1992, *Becoming Stronger: An Action Plan for Young Women*, Community Services Victoria, Melbourne.

Young People in Need Inc. 1992, *CSV Draft Young Women's Policy: "Becoming Strong": Peer Consultation*, Community Services Victoria, Melbourne.

A TRAINING PLAN CONCEPT FOR "YESTERDAY'S TOMORROWS": TOWARDS A COORDINATED AND INTEGRATED MODEL OF VOCATIONAL EDUCATION AND TRAINING IN JUVENILE DETENTION CENTRES

Doug Hubble and Ross Goodlet

FACILITATING EDUCATIONAL CHANGE IN ANY CONTEXT IS A PROCESS which requires considerable energy, usually significant resources and a commitment to quality in education by all the participants. To promote changes in the area of vocational training for young offenders within high security detention settings is to add to an already complex process a number of issues which are rarely faced in other situations. This paper is an attempt to describe not only a process which has been commenced within Western Australian juvenile detention centres to upgrade the vocational education programs but to highlight some of the critical issues which have both facilitated and encouraged these innovations.

In accepting the challenge to develop a joint model of education and training for young offenders, both the Departments for Community Services (DCS) and the Department of Employment Vocational Education and Training (DEVET) have made a commitment to providing programs which will significantly enhance the ability of the young people involved to be reintegrated into their respective communities. It is hoped that the corresponding injection of resources, expertise and commitment will not only make the time spent in detention worthwhile, but provide the participants

with a store of skills and competencies which can readily be accepted in the community and enable them to access the relevant available opportunities in areas such as further education, training or employment.

The History of Vocational Education in Western Australia Juvenile Detention Centres

Within Western Australian detention centres catering for juvenile offenders, education and training has, until recently, been a relatively low priority. While the inherent worth of education and training programs was acknowledged, the programs were under resourced, minimally staffed, inadequately coordinated and operated in isolation from other educational programs. School-aged children may not have had access to schooling programs and post-compulsory school-aged children may have had to wait a considerable time for a vacancy to occur in some classrooms. This situation was not unique to educational programs as the same difficulties applied to most areas of activity within juvenile detention centres.

Other programs operating in detention centres outside classrooms were designed to provide young offenders with some life skills, such as budgeting, form filling, understanding the law and interpersonal skills. Where vocational training was provided it was done in workshops which have been described as inadequately equipped, staffed by custodial staff who may or may not have had formal training in that particular trade area and who were unable to provide any certification to the participants for a variety of reasons. One manual arts teacher provided a modified woodwork course without any certification for any skills development that had been attained.

There was little provision for coordination and integration with the programs provided in the classrooms. In most cases boys would be allocated to either a workshop or the classroom with little, if any, opportunity to access both within the same program for the reinforcement of their skills training needs. For many years, teachers employed within detention centres have been seconded from the Ministry of Education for two or three-year periods, with preference given to experienced staff with specialist skills in either Special Education or Aboriginal Education. While there were some links for teachers to the Senior Programs Officer for Education Services, teachers received little supervision or support from either the Ministry of Education or the Department for Community Services. Workshop based group (custodial) workers came directly under the management of the Centre Superintendent and had even fewer links to any outside agencies such as Ministry of Education schools or TAFE colleges.

A general concern within the Department to upgrade the educational programs across the centres culminated in the commissioning of a review of these programs in 1989. A broadly based committee of review was convened and chaired by Paul Kelly, then Superintendent of Community Support Hostels. Other members included internal departmental members as well as representatives of Student Services in the Ministry of Education, and the Manager of Education from the Department for Corrective Services. An extensive consultation process culminated in a report which outlined the

shortcomings in the existing service provision and set some priorities for future programs. The educational programs within the centres were considered to be in need of coordination and direction and a range of programs needed to be developed acknowledging the specific educational needs of the population within the centres.

Specifically, the Kelly Review recommended that greater use be made of accredited external courses such as Technical and Further Education (TAFE) vocational programs (the delivery arm of DEVET), that workshops be staffed by either trade instructors or manual arts teachers, and that there be a general upgrading of education and training facilities (Western Australia. Department for Community Services 1989, p. 35).

At the same time as the Kelly Review was under way, the Poverty Task Force, a State government initiative, visited the juvenile detention centres. This inquiry reported that the educational programs within the centres needed to be at least of a comparable standard to that offered in the community and that present resources were inadequate and would not provide even a basic education for most detainees (WACOSS 1990, p. 25).

Early in 1991 the Regional Coordinator of Education Services within DCS was allocated professional responsibility for the detention centres' educational programs and clear lines of professional responsibility and support for educational personnel were established. In acknowledgment of the necessity to upgrade the existing programs a budget submission was prepared which would have significantly increased the number of teachers and introduced TAFE lecturers to the workshops as well as providing a considerable increase in funds to resource all these areas. No additional funds for these initiatives were available in 1990 so the focus shifted to negotiations with both the Ministry of Education and TAFE in a move to gain their increased involvement in the programs.

Following a round of meetings and visits to the centres by staff from the Ministry of Education the grant made for the schooling programs was trebled by mid-1990.

After a series of consultations in the latter half of 1990 with the various sectors of TAFE, it was agreed it would be expedient to establish a joint working party to consider the issues and formulate some longer term strategies. The working party was formed early in 1991 with the intention of developing a framework and a model for potential TAFE involvement in the detention centres.

The Contextual Setting: Defining the Terms

Within Western Australia, the responsibility for juvenile justice lies with the Department for Community Services. Juveniles, 10 to 18 years of age may be incarcerated at the direction of the Children's, District or Supreme Courts. Once offenders reach eighteen years of age they come under the jurisdiction of the Department for Corrective Services and are detained in an adult institution. No children are detained without the authority of a court order unless they are at the Remand Centre as the result of a police arrest and are awaiting release on bail or a court appearance. Approximately two-thirds of

young offenders detained in detention centres are of Aboriginal descent and half of all inmates come from rural communities. Only 25 per cent of those held in juvenile detention centres are female. There are no children detained for "welfare" reasons as happened previously in this State and still is the practice in some other States.

Initially, most young offenders are processed through the Longmore Remand Centre where they may be detained on remand for as little as a few hours or several weeks and up to several months. By contrast with the adult system, all three juvenile detention centres are maximum security institutions. Upon sentencing, young offenders are placed in either the Longmore Training Centre which accommodates up to thirty-five boys generally up to sixteen years of age, and all sentenced girls on two separate campuses, or at the Riverbank Training Centre which caters for older boys, 16 to 18 years. The only options to the maximum security facilities are in the isolated rural alternative custody placements in the final third of a sentence.

A major rebuilding program for the existing institutions is planned commencing with the construction of a new Remand Centre this year. Meanwhile, it is widely acknowledged that the existing centres are less than suitable and the general poor level of facilities and resourcing applies equally to the classrooms and workshops. Some new workshops have recently been constructed; however, they are still below the level of facilities available in either secondary schools or TAFE colleges.

Historically, the responsibility for the schooling or classroom based programs has been with the Department for Community Services. Until 1991 the workshops at Riverbank have been staffed by the group workers or custodial staff, who preferably had some trade background. At the Longmore Training Centre the small woodwork workshop was staffed by a seconded manual arts teacher.

Programs provided by teachers were generally geared to the individual student, using whatever resources were at their disposal. More capable students often accessed TAFE literacy and numeracy programs but most students were not in the centres for long enough to receive any such form of certification for their studies.

Once the professional supervision of the education personnel became the responsibility of the Regional Coordinator for Education Services a second position of Education Coordinator Institutions was created to provide the professional support, facilitate curriculum development, negotiate with other agencies and coordinate teachers' professional development.

Within Western Australia, DEVET has a responsibility for post-compulsory education and vocational training of the population fifteen years plus. This responsibility includes enterprise level training which currently is applicable to approximately 8 per cent of the total population. In addition, TAFE offers a range of community based training and further education initiatives that are responsive to a variety of social demands. These include Equity Programs which have been developed in response to the needs of specific target groups including Aboriginal people, women, the educationally disadvantaged and non-English speaking background groups.

TAFE as a further education and training provider has been required to continue the education process of a large section of our community through the delivery of certificate and diploma courses. This represents a large component of the TAFE offerings.

Programs are provided through full-time and part-time courses both on and off campus within the State. The services of TAFE are offered through a state-wide network of services including distance education and alternative technology.

1991 Working Party Outcomes

In establishing a joint working party between the Departments for Community Services and Technical and Further Education it was apparent that in addition to the operational planning the group needed to develop some form of broad overarching agreements. It was recognised that there was a priority for the formulation of a joint policy statement. This statement encompassed an acknowledgment of the responsibility by both departments in providing for the educational and training needs of youth at risk generally, as well as the specific needs of young offenders, both within the general community and those incarcerated. Along with an acknowledgment of the role TAFE would need to play in such training programs, it was also noted that "Not only are new and different resources required but also a major re-allocation of present facilities" was needed (DCS & TAFE 1991). The success of the approach was to be measured by the ability of young people to successfully reintegrate back into their community upon release and it was felt that the involvement of TAFE within the centres would be a significant step in this regard.

A significant departure from existing practice was the acknowledgment by TAFE of an ongoing role with regard to youth at risk within the community. It was considered that if young people could be offered an opportunity to continue their chosen vocational training option upon release their successful reintegration would be greatly enhanced. Even for those who left the centres with a TAFE certificate of their acquired competencies, the knowledge that they had some credits would not only increase their self-esteem but would be of benefit when applying for training or employment opportunities. It required a flexible and adaptable model to cater for the high turnover of young people within centres, their generally lower than average levels of academic achievement, possible negative perceptions of education by clients, and the limited facilities and resources available.

Within its general programs TAFE had developed a model based on the Australian Traineeship System (ATS) for entry level training for young people wishing to join either further training opportunities or to gain employment. This assumed students may have a minimal level of skills and enabled them to enhance their competencies in not only vocational areas but in their general education and personal development areas. This model was accepted as it enabled any vocationally based program to link across to the classrooms and also involve aspects of the "life skills" programs operated by group workers.

For an integration between classrooms and workshops to occur it was agreed that a literacy and numeracy curriculum development project was required. Further details of this project is provided in the paper by Thompson (1992). Some short courses were trialed at the Longmore and Riverbank Training Centres. Part time TAFE trade lecturers at two local colleges were identified to provide short courses including welding, painting and decorating and sign writing. These courses were held over a period of months in mid-1991.

At the same time, a grant was received from the Children in Residential Institutions Program, for the literacy and numeracy curriculum development project. Staff were then employed through both the TAFE Adult Literacy unit and DCS to develop the materials for the classroom teachers to support the TAFE programs.

These trial programs were considered to be successful by all concerned and provided a model for effective TAFE involvement in vocational training within the detention centres. A Community Services budget bid to secure additional positions to second TAFE vocational training staff was successful in the latter part of 1991. At the time of these developments there was considerable public and media attention focussed upon juvenile justice issues. Much of the debate was centred around high-speed car chases and the concerns about the appropriateness of detaining young people in the centres. At a time of critical financial restraint in government spending this was one of the few areas to receive additional funding by the State government.

Developing the Model of Vocational Education and Training

Given access to the supports offered by TAFE and other relevant agencies, much of the present program within each of the institutions can now be incorporated into a planned and coordinated education and training approach. Significant human resources are presently allocated to the formal education and workshop based training and aspects of personal development within the detention centres. This new approach will ensure that present activities are positively directed towards the reintegration of young people to the community. This requires that they be supported to develop appropriate skills and that these are recognised both during their time in the centres and upon their release.

The areas of education, vocational education and training, and personal development until now have operated in isolation due to a lack of overall planning and coordination. Not only are new and different resources required but also a major re-allocation of present facilities. Present programs will benefit from a more coordinated and structured approach in response to the needs of the individuals and the reality of the prevailing labour market conditions.

The Training Plan model will provide the means whereby the resources and expertise of both departments can be deployed most effectively to meet the relevant needs of young people at risk in both detention centres and in the community. This will require the integration of the educational, vocational and personal development needs of each young person in a planned and

coordinated manner. The adoption of this approach will facilitate youth at risk in a variety of settings, participating in a range of relevant activities of immediate and long term benefit.

Implications and Issues

From the outset it has been understood that the move towards an integrated model of vocational training and education is but part of a broader educational program being developed within detention centres. While this approach is suited to many of the incarcerated young people, it does not meet the needs of those students who wish to participate in full-time educational programs. Many of the young offenders have both a need and, in many cases, a desire to participate in an intensive initial literacy and numeracy program or further education courses such as those offered through the Ministry of Education Distance Education Centre or TAFE External College.

Younger students of compulsory schooling age require more conventional schooling programs to meet their needs, comparable to those in community schools. Given that the majority of students are of Aboriginal descent much still needs to be done to provide culturally relevant programs.

The present offerings are limited to a small range of vocational areas which will only appeal to a proportion of the potential student population. It was expedient to focus upon the wood and metal trades in the initial programs as existing workshops were available. From information available on the placement of young offenders in employment these vocational areas are highly suitable. Nonetheless, the labour market has such diverse opportunities and, within realistic limits, a broader range of vocational areas should be offered. Within the non-trade areas many employment opportunities exist, such as retailing, warehousing and store work, and work in the hospitality and service areas.

While the training plan concept has been accepted, much work and resources are required for effective implementation. While there has been significant goodwill towards these initiatives the effective coordination and integration across training and classrooms has been limited by the present level of staffing. For a training plan model to be adopted within the centres, which is responsive to individual needs and capitalises upon all the available options, it requires additional educational staff to assume a coordinating role across the educational, vocational and personal development areas of the program.

The initial phases of the TAFE involvement within the centres has shown the need for all staff to become aware of the Training Plan model and how it may impact upon their role. A need exists to train all relevant staff to become familiar with the Training Plan model and to consider the impact it may have upon their work. For some staff there may be changes not only to their duties, but potentially to their conditions of employment. This is particularly evident with the group workers operating alongside TAFE staff in the workshops.

Both Departments have yet to finalise a strategic plan specifically to identify the education and training needs of young offenders and youth at risk in the community, and for the continuation of the program in detention

centres. The joint working party also identified the need for both departments to allocate human and financial resources to this program.

An immediate outcome of the initial introduction of the integrated program has been a number of clearly identifiable benefits. Staff within various areas of the detention centres have developed a much closer working relationship, educational issues have taken on a new prominence in program planning and arranging student placements. Some young people are leaving the centres with a TAFE certificate and a statement of the competencies gained. Nonetheless, for the continuation and expansion of the model to cater for the diverse range of student needs and to ensure the appropriate degree of coordination and integration, it will require significant changes in areas outside the educational programs. Custodial staff (group workers) have a major role to play in both the vocational training and personal development areas, however, this needs to happen in concert with the other components of the program. Within the detention centres, many of the children of compulsory schooling age have clearly stated they no longer wish to participate in a schooling program. Given that within the detention centre a TAFE based program may be operating alongside the classrooms, it would be appropriate for such students to have access to the TAFE programs. A formal acknowledgment of this needs to be made by TAFE if such students are to receive accreditation for their participation in any programs. This issue will need addressing if some of these young people are to access relevant programs upon their return to the community.

While there are undoubtedly many other demonstrable outcomes it is timely that a formal evaluation be planned which can objectively assess the effects of this initiative. While the initial phase is under way it is appropriate to consider some study which will assist in the shaping of later stages of the program. If the resources required are as considerable as previously mentioned then an impartial evaluation could be the most convincing argument for the continuation and growth of the program.

References

Thompson, J. 1992, "Appropriate programs: literacy in a specific context", in *The Way Out Conference Proceedings*, ed. P. Sirr, Outcare, Perth.

Western Australia. Department for Community Services 1989, *Review of the Provision of Education Services to DCS Secure Centres*, Perth, November.

Western Australia. Department for Community Services and Technical and Further Education 1991, Draft Joint Policy Statement on Education, Employment and Training for Youth at Risk, Perth.

Western Australian Council of Social Service 1990, *Report on the Western Australian Poverty Task Force*, WACOSS, July, Perth.

EDUCATIONAL PROVISION FOR YOUNG PEOPLE IN CUSTODY: A REVIEW OF PROVISION AND COORDINATION IN NSW JUVENILE JUSTICE CENTRES

Sara Thorley Smith

DURING THE LAST FOUR YEARS, MANY REVIEWS HAVE BEEN UNDERTAKEN and reports produced which focus on juvenile justice in New South Wales. A number of the reports have focussed specifically on the education and schooling of young people in custody in the State. Teachers, juvenile justice officers and education professionals involved in the delivery of educational programs to young people in custody believe that in the majority of juvenile justice centres the quality of educational program delivery appears to be improving and providing young people in custody in NSW with more choice of subjects, greater flexibility in participation options and accreditation on completion.

Responsibility for Provision

Until 1981, teachers employed by the Department of Youth and Community Services provided educational services at detention centres in NSW. This Department took responsibility for all aspects of young people's education including sponsoring teachers-in-training at one of the teacher training institutions. The teachers were employed at the detention centres as education officers and were responsible to the superintendent, through the senior education officer at the centre.

In 1980 a review was conducted and a decision was made to transfer the schools and the teachers to the Department of Education. The schools which were to be transferred included those in both detention centres and State

ward facilities. Allowance was made for teachers from the Youth and Community Services system, whose qualifications did not entitle them to employment with the Department of Education, to upgrade their qualifications over a period of time, in order for them to be entitled to transfer and to be promoted within the Department of Education. The teachers were responsible to a principal and became part of the local inspectorate of schools in their community. A head office inspector (later replaced by a senior policy officer) took responsibility for policy and interdepartmental coordination and liaison. During the next ten years there was a significant change as teachers transferred in and out of these schools known as community care schools.

The Department of School Education has a community care school located at each of the juvenile justice centres in New South Wales. The schools provide educational programs for all students of compulsory school age and for those students who wish to pursue further education. Students may attend school either full time or part time, depending on the daily organisation of the centre and the mix of programs offered.

The NSW Technical and Further Education (TAFE) Commission provides programs for young people of post compulsory schooling age, focussing on pre-vocational skills and training. The courses are purchased by the Office of Juvenile Justice on a fee-for-service basis depending on the identified needs of the centre at which they will be delivered.

The Office of Juvenile Justice has recently employed vocational instructors at its centres. To a certain extent, these officers and the programs which they develop and deliver have replaced program provision formerly made by TAFE. The areas in which they develop programs include such things as woodwork, metalwork and fibreglassing. Vocational instructors are employed at the centres on a shift rotation, and young people enrolled in the community care schools can usually access the program at some time during the week as an addition to their school program.

Reviews and Reports on the Education of Young People in Custody in NSW

In 1988, the senior policy officer with responsibility for the Community Care Program in the Department of Education produced a *Position Paper on the Education of Students in Community Care Schools* (New South Wales Department of Education 1988). The position paper identified concerns in many areas of service delivery and made a significant number of recommendations aimed at improving the educational outcomes for students in community care schools and the structure and operation of schools. The major recommendations were:

- the schools be classified as schools for students with severe disability with a staffing ratio of one teacher to six students;

- a task force be established to coordinate the development of policy documents and curriculum support documents for students in community care schools;

- an interdepartmental committee be established to develop guidelines to resolve issues of concern in community care schools and that such guidelines would be approved and signed by the Directors-General of both departments. Issues of identified concern included communication between officers, role of youth workers in the schools, the establishment of management committees within each centre/school, effective casework and casework management, clarification of teacher responsibilities with respect to security, development of mutually acceptable behaviour standards and joint induction and professional development of officers;

- early transfer options for teachers not suited to their role in community care schools and limited tenure for all teachers working in these schools; and

- a review of properties including responsibility for maintenance and upgrading of buildings in which the schools were housed.

The recommendations of the position paper, have provided a focus for subsequent initiatives in this area.

In 1990, the Department of Family and Community Services (FACS) began to investigate the options of delivering post compulsory educational services to its residents, who were believed to be older, more sophisticated juveniles. Department of Family and Community Services seconded an officer from the TAFE Commission who had experience in delivering this type of program to boys at Mt Penang Detention Centre (boys, sixteen years and over on committal orders).

Significant funding was made available to detention centres by FACS to trial vocational and training programs purchased from TAFE. At some, but not all detention centres, the superintendents involved the principals of the community care schools and attempted to avoid duplication of services and give all residents the opportunity to participate in a variety of program components offered by both TAFE and the Department of Education. Capital works monies were redirected to the building of multi-purpose workshops to accommodate the TAFE programs.

Two other formal reports were released in 1990 which made recommendations about the provision of educational programs to young people in detention centres. These two formal reports and their major recommendations with regard to education and the provision of schooling in detention centres in NSW were:

1. Community Welfare Advisory Council's *Report on Programs in Juvenile Detention Centres* (August, 1990) to the Minister for Family and Community Services (later and currently the Minister for Education and Youth Affairs).

Recommendation 3 -

that every resident have a guaranteed access to appropriate internal programs.

Recommendation 5 -

(a) that the local administration of centres be given the responsibility of developing appropriate programs for individual centres;

(b) that the local administration recruit suitable staff, as required in the employ of Family and Community Services to work in the programs devised;

(c) that the Department make available appropriate consultants for the development of programs.

Recommendation 8 -

(b) that the Department actively pursue the establishment of appropriate training courses in the tertiary or TAFE sector.

2. Youth Justice Coalition's *Kids in Justice: a blue print for the 90s* (1990) report.

Skills: More use should be made of training and educational programs offered by TAFE. Specific programs should be jointly developed.

Recommendation 209 -

to ensure a developmental approach in detention centres, greater emphasis should be placed on the particular needs of young offenders for developing responsibility, educational and vocational skills and living skills. In particular, more resources need to be provided to ensure that an appropriate range of educational and vocational programs are available to all detainees, both inside detention centres, and as far as possible, in nearby TAFE colleges.

Recommendation 210 -

recent moves towards closer links between TAFE and detention centres should be promoted and accelerated. To this end the Interdepartmental Committee in Youth Affairs should establish a sub-committee to address the state-wide resourcing needs for such developments. At a local level, links between senior management of all detention centres and local TAFE colleges should be formalised and regularised.

Recommendation 211 -

> great encouragement should be given to undertaking of apprenticeships, certification and accreditation of vocational courses and placements by young offenders.

Recommendation 212 -

> a young offender employment scheme (pre and post release) should be developed and implemented through NSW to enable intensive and supervised job placement and employment support for young offenders. This scheme should be developed and jointly run by FACS, Office of Youth Affairs, Department of Education, Employment and Training, Department of Industrial Relations and Employment, TAFE and Commonwealth Employment Service, in cooperation with local business and community agencies.

In January 1991, a standing committee of superintendents of detention centres and principals of the community care schools located at detention centres, was established to develop a *Protocol Paper for the Education of Young People Enrolled at Schools at Detention Centres.* The issues on which the protocols were developed were jointly identified by the principals, superintendents and senior officers of both the Departments of Education and Community Services. The recommendations of this paper were:

Recommendation 1 -

> annual negotiation take place between the Principal and Superintendent with regard to the following issues: occurrence and attendance at staff meetings, staff/centre role and responsibilities, casework, use of facilities and equipment. Involvement of youth workers in school, hours of operation of school, code of dress of residents at school, behaviour management policies and procedures, establishment and maintenance of formal communication channels.

Recommendation 2 -

> policy statements and memorandum issued by either department which jointly affect the operation of the schools located at juvenile justice centres be signed by both Directors-General before distribution.

Recommendation 3 -

> the properties sections of both departments conduct a review of the issue of provision and maintenance of school facilities located at juvenile justice centres.

Recommendation 5 -

> a task force meet on a needs basis (at least twice per year) to consider further issues regarding protocol as they arise.

During 1991 and 1992, the NSW Upper House Standing Committee on Social Issues conducted a review of juvenile justice and prepared a subsequent report *Juvenile Justice in NSW*, which was released in May 1992. While no recommendations were made about the schools themselves or changes in service delivery or provision, some recommendations were outlined which had impact for the Department of Education in general, especially the Department's role in areas such as school attendance, Aboriginal education and crime prevention.

In December 1991 the Ministers and Directors General for Family and Community Services, Education and Youth Affairs, and Industrial Relations Training and Employment agreed to hold an interdepartmental review. The review was known as the "Joint Review of Educational Programs for Young People in Custody in NSW". A senior director from each department was appointed to the review panel and the terms of reference and process of the review were agreed to by the Ministers. The review took place over a twelve-month period, the panel visiting each detention centre and receiving oral and written submissions. The final report was submitted in April 1992.

In July 1991 the responsibility for detention centres in NSW was transferred from the Department of Community Services to the Office of Juvenile Justice, newly established under the Minister for Justice and separate from welfare. The Minister for Justice established a Juvenile Justice Advisory Council late in 1991. The current role of that council has been to produce a Green Paper on Juvenile Justice in NSW for the Minister of Justice and the Attorney-General.

The Green Paper includes a chapter on education and recommendations for ensuring quality educational outcomes for young people in custody as well as coordination of services and improved interdepartmental communication.

In August 1992, the Department of School Education's Quality Assurance Unit was commissioned to complete a quality assurance review of schools at juvenile justice centres in NSW. TAFE and the Office of Juvenile Justice have nominated officers to participate jointly in the review.

Current Provision and Coordination of Educational Provision for Young People in Custody in NSW

Each juvenile justice centre and the community care school located at it, offer a variety of programs which are designed to meet the differing needs which arise in each institution. These needs include the number of residents, the physical size and layout of the centre and its school buildings, the age and/or sex of residents and the security classification of the centre.

At some centres, for instance Riverina and Yasmar, schooling is compulsory for all residents. At other centres, such as Mt Penang, the school

can only accommodate forty-eight students and an additional eighteen students in the high security unit located on the same campus. The high security unit is a separate juvenile justice centre but is serviced by Girrakool (Mt Penang) school. At the majority of centres, attendance at school is compulsory for residents aged 15 years and under. Other residents wishing to attend school must apply for enrolment and usually participate in an interview with the principal. At this interview, negotiations take place with the student regarding their aims for attending school (for example, wishing to complete the Higher School Certificate) and the number of sessions they will attend per week (full or part-time). Two of the community care schools, Keelong and Cobham, have recently moved into new buildings completed by the Office of Juvenile Justice which were purpose built for school education. The remainder of the schools are operating in a range of premises, including resident recreation rooms. Some educational programs are delivered under quite difficult physical conditions.

For the first time in three years, since the introduction of the "truth in sentencing" legislation, the number of young people in custody has dropped, however, most of the community care schools located at the centres are fully enrolled.

To a certain extent, increased student enrolments would mean increased flexibility and an ability to operate a large number of diverse programs on each site due to the presence of many vocational instructors with a variety of skills and a larger number of teachers with expertise in many different subject areas.

At the present time, coordination of the juvenile justice centres across NSW is managed centrally by the Director (Centres) from the Office of Juvenile Justice. Policy coordination and support of the community care schools is the responsibility of the Senior Education Officer (Community Care) from the State office of the Department of Education, although the schools are responsible in terms of administration and professional matters through their Cluster Director and regional office. TAFE provides services through local colleges and networks of that organisation, with policy being managed by the Manager of Foundation Studies located in their State office.

Coordinating educational provision for young people in custody in NSW between one centralised department and one decentralised department, with TAFE working from a very decentralised basis, is a new challenge for those concerned with juvenile justice in New South Wales. Currently, interdepartmental relations are at their best, which is in turn increasing education and training opportunities for the young people resident at juvenile justice centres in New South Wales.

Over the last two years, the highest number yet of young people in custody have completed their School Certificates and their Higher School Certificates. Many young people have been maintained at their grade level while in custody and have been able to return to their local high school and continue their studies. Many young people who have been out of school for some years prior to committal, have taken advantage of opportunities to participate in school programs and have had one of their first positive educational experiences, resulting in increased literacy, numeracy and social

skills. A number of young people in custody have completed accredited and articulated units of TAFE certificates or participated in link type courses which will allow them access to community based TAFE programs and colleges on release. Two young people have completed their secondary schooling while in custody and are now participating in university studies through distance education.

A number of innovative and exciting programs which have been developed by community care teachers for their students have found wide appeal and have been endorsed by the Board of Studies or implemented widely by teachers in regular high schools. An example of this is the Law Awareness Program developed for the students at Minda School. The program was endorsed by the Department of School Education and the Law Society as part of Law Week activities and has been printed and distributed more broadly.

Teachers in community care schools have become aware of the significant needs of young people on release from juvenile justice centres and have been developing pre-release packages with the students from their time of entry to the centre, which will assist them to return more successfully to their communities, schools and future employment and training opportunities.

Promising Practices in the Education of Young People in Custody

Promising practices which support meaningful special education programs in juvenile justice centres include functional assessments, appropriate curricula and instruction, transition services and collaborative links among courts, schools, juvenile justice centres and post release programs (Leone et al. 1991). There are some strong indications that NSW is beginning to move towards this type of model and to take account of the specific domains identified by these researchers in the USA.

Comprehensive planning mechanisms for providing appropriate and quality educational programs to young offenders exist only as a result of coordination and collaboration by those departments with a responsibility for delivering services to young people while in custody. The services do not exist prior to nor following incarceration when the young person is not the subject of control (detention) orders. The conflicting duties, priorities and responsibilities of staff from the juvenile justice, education and community agencies who come into contact with the young offender, sometimes inhibit the provision of special education services.

Programs for young people in custody classically have three functions. These functions are:

- maintain custody and supervision;
- provide work in which the young person makes restitution and/or maintains the physical and day-to-day environment of the institution; and

- provide programs (including educational ones), in which the offender has appropriate services and meaningful activities to occupy his or her time and develop skills or address rehabilitative needs.

Comprehensive planning mechanisms and interdepartmental cooperation mean balancing these competing priorities, keeping communication channels open and developing a high level of cooperation among all staff responsible for the young people, including youth workers, teachers, superintendents, and principals.

References

Community Welfare Advisory Council 1990, *Report on Programs in Juvenile Detention Centres*, New South Wales Government Printer, Sydney.

Leone, B., Rutherford, J. & Nelson, S. 1991, *Special Education in Juvenile Corrections*, Council for Exceptional Children, Virginia.

New South Wales Department of Education 1988, *Position Paper on the Education of Students in Community Care Schools*, Department of Education, Sydney.

New South Wales. Department of School Education 1991, Protocols Paper for the Education of Young People Enrolled In Schools at Detention Centres, Internal Document.

New South Wales. Upper House Standing Committee on Social Issues 1992, *Juvenile Justice in NSW*, New South Wales Government Printer, Sydney.

Youth Justice Coalition 1990, *Kids in Justice: a blue print for the 90s*, Youth Justice Coalition, Sydney.

DELINQUENCY AND HOMELESSNESS: TOWARDS AN INTEGRATED RESPONSE

Lesley Podesta and Peter Jones

THIS PAPER WILL BEGIN BY LOOKING AT SOME OF THE TRADITIONAL explanations given for youth offending and then juxtapose these with a profile of marginalised and homeless young people to argue in support of a social theory of causes of crime. The authors will then describe some program responses to the problems described which have been undertaken in Victoria.

Traditional Explanations for Youth Offending

Almost everyone has a view on why young people commit offences. Some theories are listed below:

- Generational criminality—an inherited predisposition for wrongdoing or growing up with a culture of crime.
- Media reporting and the media's saturation with crime and violence invoking copycat responses which accept criminal "normalness".
- A moral breakdown in the fabric of society based on factors such as promiscuity or loss of discipline and parental control.
- Thuggery and violence for its own sake.
- Physical environmental factors creating a fertile bed for criminal activity such as poor street lighting, industrial wastelands, urban design which depopulates remote city stretches and provides concealment for potential attackers.
- The notion that adolescent crime is often essentially related to growing up and is therefore a stage in one's development which one grows out of.

- Related to this is the theory that a large proportion of the population being concentrated in the adolescent years can result in increasing crime rates and that increasing economic dependency of young people on their families is currently resulting in prolonged adolescence.

What have marginalised and chronically homeless young people got to do with all this?

First of all we know that they are "very likely to be involved in the criminal justice system" (Burdekin 1989, p. 19). Two Victorian examples make the point clearly. In a Salvation Army auspiced study of 200 homeless young people, conducted in Melbourne in 1989 and published as the *Forced Exit* (Hirst 1989) report, it was found that 72 per cent were under some corrective or protective order (and of these 78 per cent were under a corrective order). In a separate study of sixty-five marginal and homeless young people undertaken as part of the review of the Victorian "Crossroads" Project (Newman et al. 1991) it was found that 94 per cent were subject to some form of "legal determination" with 46 per cent having had a combination of legal determinations, 33 per cent were presently or had previously been state wards, 5 per cent were current wards and 9 per cent were on bail. Of the *Forced Exit* sample (Hirst 1989), "62 per cent had been under a custodial residential order at some time" and 44 per cent of the *Great Leap Forward* sample (Newman et al. 1991) had also been placed in a penal facility or institution (most commonly Turana, Winlaton or Pentridge Prison). These findings suggest that as a community we have sometimes confused homeless young people's need for a secure accommodation environment with the need to lock up or detain them.

A Profile of Homeless and Marginal Young People

If one develops a profile of homeless and marginal young people some clues as to why this confusion has arisen may emerge. We may also declare the apparently comprehensive list of traditional causes of crime, just referred to, incomplete explanations.

The Burdekin Report (1989) identified three different categories of homeless young people:

- those who leave home temporarily and then return;
- those who have left home and require some temporary assistance to make the transition to independence; and
- those who become homeless in their mid to late teens and who find it very difficult to break the cycle of homelessness.

It is this third group who surface in programs such as "Crossroads" (often after a period of contact with the welfare or criminal justice systems) and with whom this paper is primarily concerned. Commissioner Burdekin

describes these young people as being "locked into a homeless, rootless lifestyle often . . . embroiled in the sub-culture of the streets with its related drug abuse, violence and conflict with the law" (Newman et al. 1991). The corresponding experience of being locked into this sub-culture is often of "being locked out" (by their behaviour and reputation) of mainstream community and its human services; schools, the health system, employment and income support and counselling and psychiatric services.

So how would we characterise homeless and marginalised young people?

- They are involuntarily homeless often from ages as young as thirteen to fourteen and are sent into the world unequipped to cope with its threats and to meet its challenges (Leary 1990).
- As a result, many are stalled developmentally in their early teens for a number of years (Leary 1990).
- Their connection with family is often existent but tenuous and unsatisfying (Leary 1990).
- They feel intensely the pain, isolation, anguish and abandonment of prematurely leaving home, often exchanging a situation of little care or nurturing for none at all (with the exception of that provided by peers) (Leary 1990).
- Many have left school before the statutory leaving age and most fall well short of the bottom rung of the prescribed Carmichael and Mayer competency ladder (Leary 1990).
- Most are painfully, anxiously aware of feelings of inadequacy in many aspects of their lives (Leary 1990).
- This sense of fragility and vulnerability consumes much of their strength and energy (Leary 1990).
- They develop screens to conceal their vulnerability such as anti-social behaviour, bravado and displays of toughness and invulnerability (Leary 1990).
- Many fear and shun closeness and desire both independence and isolation (Leary 1990).
- Whilst living very immediately, engaging in reckless and risk-taking actions which suggest that they are out of love with their lives and out of hope that they may feel differently in the future, many nevertheless harbour and nurture complex fantasies about the future, often bound up with family (Leary 1990).
- Anger, depression and sadness are often mixed up, finding inward expression in self-mutilation, risk taking behaviour and suicide

attempts and outward expression in a sometimes confusing cocktail of criminal and anti-social behaviour (Leary 1990).

- Their grip on physical, emotional and (meaningful) support and human service networks is tenuous and so, therefore, is their grip on any hope of quality of life—and, in some cases, on life itself.

- Approximately 43 per cent of homeless young women will have experienced sexual abuse before leaving home (Hirst 1989) and up to 76 per cent will have this experience revisited upon them once homeless (Alder 1991).

- Young homeless men on the street are also extraordinarily vulnerable to violent attacks, up to 96 per cent having been bashed since becoming homeless (Alder 1991).

- The health of marginal and homeless young people is characterised by a range of disorders, including: malnutrition, sexually transmitted diseases, tinea, asthma, scabies, crabs, eczema and Hepatitis B. Many have a lack of concern for their own well-being which means that minor infections may be allowed to burgeon into major illnesses (Newman et al. 1991).

- Many have psychiatric disorders and many "self-medicate" with alcohol, marijuana, cough medicine and other drugs such as speed and heroine (Howard 1992). Recent research through the National Youth Affairs Research Scheme has found that disagreement between the various psychosocial, social and medical professionals on classifications for mental conditions means that referral between their various systems is often dysfunctional (Sawyer et al. 1992). Often the psychiatric disorder of such young people is considered to be drug induced and, therefore, not considered appropriate for treatment within a mental health facility. The result is that many homeless young people go without treatment and so develop dual disabilities (Newman et al. 1991).

Unfortunately, the criminal justice system is not always so discriminating as the health system in who it deals with. It is not without good reason that the third most common reason given in the *Forced Exit* report for young homeless people not seeking medical care was "fear of contact with police" (Hirst 1989). As we have already seen, 62 per cent had been held in a custodial institution at some time—in many cases in a corrective facility.

This extensive sketch of the circumstances of homeless and marginalised young people underscores the close relationships which should exist between juvenile justice responses and responses to issues such as alcohol and drug use, child abuse, homelessness and suicide. Delegates at a youth suicide conference held in Adelaide in July 1990, for example, heard that:

- a 1985 study had found that "70 per cent of adolescents who end their lives by suicide had associated substance misuse and 70 per cent had a history of anti-social behaviours . . ." (Shafii et al. 1985);

- three other studies throughout the 1980s found that the comorbidity of antisocial and depressive symptoms appears a particularly lethal combination (Chiles et al. 1980; Frances & Blumenthal 1986; Shaffer et al. 1988);

- a 1982 comparative study found that a group of fifteen-year-old young offenders (42 male, 22 female) held in a remand centre in Western Sydney "were as depressed as a group of adolescents diagnosed as depressed by psychiatrists" (Lamond 1982);

- amongst those most likely to commit suicide in prison were "young offenders with histories of convictions for property offences and who were single with no job, family or support" (Hatty & Walker 1986);

- of seventy-eight adolescents, "most from chaotic social backgrounds and . . . without education and social support" admitted to Adelaide's Youth Remand Centre in a study of 1990, 40 per cent registered depression scores "four times greater than that found amongst adolescents living in the community . . . [a] figure comparable with that reported by adolescents attending child psychiatric services in Adelaide" (Kosky et al. 1990);

- suicide is the leading cause of death in most penal settings with a rate three times that of the civilian population (Tuskan & Thase 1983).

The report of the Royal Commission into Aboriginal Deaths in Custody highlights the life experiences which often result in people ending up in prisons and lock-ups and also reveals experiences once incarcerated. For many young people who are already adrift in the world and unglued socially, the experience is one in which an already devalued life experiences a further spiritual diminution. This is not the intention of custodial settings but it is often how young people relate to and describe their experiences within them.

Having described some of the circumstances of the young people with whom this paper is concerned we are in a better position to examine the causes of youth crime listed at the beginning of the paper and to reject them as only half complete. Even the addition of the "Consumerism and the Underclass Paradigm", the leftist notion of a proletariat flouted with the glittering prizes of our materially comfortable community—prizes constantly paraded as needed and available whilst simultaneously being denied and withheld—will not serve entirely. The young people described are poor materially, but they are also deprived of the emotional support found within an harmonious family situation. They are disaffected from a legal system which is perceived by them as "inaccessible, inadequate and hostile" (Robson 1992, p. 1), but they also feel a more general disengagement from almost all

other social institutions—including the most primary and immediate of these: their own families. Eckersley (1988) is perhaps close to the truth in his analysis of young people as casualties of the speed of the social, economic and technological changes occurring within western societies which have left some families and young people reeling.

Victorian Program Responses

Having arrived at this rather grim critique of the world through the eyes of homeless and marginal young people, the authors believe that we are in a strong position to argue that criminal behaviour for such young people is only one manifestation of a many-sided problem. Other manifestations include self-harming behaviours such as suicide attempts, drug and alcohol abuse, driving recklessly, failing to observe basic health care requirements, engaging in high risk sexual activities and needle sharing. Adversarial law and order responses, such as heightened policing or harsher prison terms for such young people, are not a complete solution and may in fact further exacerbate the problem.

An integrated, holistic response which addresses the root causes of offending is required. The policy underpinning which exists in the broadest sense to support us in this approach is Victoria's integrated anti-crime strategy. This strategy acknowledges that policing is only one crime prevention mechanism and that socioeconomic, cultural, environmental and personal factors require a more coordinated and proactive response. The initiatives described in this paper may all be seen as fitting within this overall strategy.

Diversionary systems

Like most other jurisdictions of Australia, Victoria has invested a great effort in developing diversionary programs which keep young people out of custodial settings. These include a very successful police cautioning system and, more recently, two agencies charged with alternative dispute resolution powers have been established. A comprehensive and rigorous review of national and international models of alternative dispute resolution models was commissioned and published by the Preston Youth Homelessness Taskforce (Fisher et al. 1992).

Adolescent/parent mediation

Family mediation has also been a feature of the work of the Youth Homelessness Taskforce. In his paper "Fast Cars Don't Kill Me : Marginalised Young People, HIV and Suicide" (Leary 1992), on which the present writers have drawn extensively in the profile of marginalised young people in this paper, Leary argues that contact with and support of family is absolutely critical to survival. Assisting both the young people and the family to regain and maintain some level of contact must remain on the agenda even if it appears impossible. The experience of Victoria's Youth Homelessness Taskforce strongly confirms this perception. Through the Preston Dispute

Settlement Centre, the Preston Youth Homelessness Taskforce has funded a Parent/Adolescent Mediation Service. The service trains adolescent mediators to undertake mediation between young people and their parents. The aim is to achieve reconciliation in a safe and neutral setting and so prevent homelessness and risk of offending.

Significant research exists which emphasises the need to provide young people with support from at least one significant adult, preferably a parent or guardian or, if not, a teacher, a friend or a youth worker. An example of such research is cited in the NYARS report (Brady 1992) *The Health of Young Aborigines* in which the author refers to a comprehensive longitudinal Hawaiian research study of "high risk" children. The 201 children in the study designated "high risk", "experienced severe parental stress, grew up in poverty . . . lived in families experiencing discord, divorce, parental alcoholism or mental illness" (Brady 1992). Two-thirds of these children developed "serious learning or behavioural problems (by 10 years) or had delinquency records, mental health problems or pregnancies before the age of eighteen". However, seventy-two of the young people in this sample made a successful, untroubled transition to adulthood. For the researchers in this study these became the "resilient children". When interviewed at eighteen "many resilient youth mentioned a favourite teacher who had become a role model, friend and confidant and was particularly supportive at times when their own family was beset by discord or threatened with dissolution." Others who experienced delinquency or mental health problems in adolescent years were able to bounce back in their twenties and thirties. Again "informal" sources of support were considered critical to this resilience.

In keeping with this, many of Victoria's most successful programs which work with young offenders and disaffected young people place an extraordinarily strong emphasis on providing the sustained support of a significant adult. Significantly, such relationships emphasise a shared agreement or partnership between the young person and the adult to achieve personal objectives for the young person (as opposed to externally imposed discipline from courts and statutory authorities). This is a feature of programs such as Crossroads, the "Inside-Out" Project and the Brosnan Centre.

Crossroads

Perhaps the highest profile and most successful service for homeless and marginal young people in Victoria is the Crossroads network of programs. Crossroads provides a holistic response to the needs of the young people in its care through an integrated network of programs. It places a very strong emphasis on the value of the resource of time for young people. Leary's (1992) and Burdekin's (1989) analyses of the problems experienced by homeless young people emphasise the absence of stability which has characterised their lives. Crossroads recognises that it is tending the bruises of a lifetime and they will require proof of sustained support before a healing process can commence. There is a recognition that young people's tolerance to intervention is low at first and that the initial changes for a person in contact with an effective homeless service will not necessarily be transition to independent living, but better and more stable accommodation, improved

nutrition and greater personal safety. Young people who come to the project usually display a number of behavioural problems which can make life difficult for staff. But the rules of youth work dictate that this swearing, aggression, unsophisticated communication, bravado and depicting of illegal exploits must sometimes be accepted, sometimes ignored, always managed and never used against the young people. In this way trust is built and perceived anti-social behaviour contained or diminished (Newman et al. 1991).

Crossroads is an integrated service which provides accommodation, employment experience and access to income support and other human and counselling services. The Crossroads model is incremental in the sense that it allows for young people to develop at different rates in different aspects of their lives. Some may begin by living in independent accommodation but with employment support, while for others independence is currently unattainable but they are given the confidence to make significant steps towards independence and optimising the control over their lives which is within their grasp. With the demise of CYSS services three or four years ago and their replacement with more formal structured employment programs and services such as SkillShare and Youth Access Centres, integrated services such as Crossroads perform a critical and vital function.

Inside-Out and the Brosnan Centre

The "Inside-Out" Project for young offenders and potential young offenders is a companion project to Crossroads. "Inside-Out" assists the younger end of the young offender continuum and emphasises the need for the sustained support of at least one significant adult for the young offenders within the program. Inside-Out complements a similar integrated program for older offenders run through the Catholic Church's "Brosnan Centre". Like Crossroads and "Inside-Out", the "Brosnan Centre" provides accommodation, employment and skills development experience, counselling, advocacy and support. Again, there is a strong emphasis on sustained and consistent support for the young people in the program who are often making their transition back into the community following imprisonment. Whilst "Inside-Out" is a fledgling service, soon to become independent of Crossroads for the first-time (having demonstrated enormous success in its first twelve months), "Brosnan" is more of an institution in Victoria, having survived and developed since the 1970s. Both programs place a strong emphasis on the dignity of all human life.

Funding was made available in August of this year to consolidate the "Inside-Out" project and to establish community outreach worker positions in areas with an index of high offending risk in Victoria. The community youth workers' tasks will be to provide intensive support to young people at risk of offending and to work in partnership with local support services to create a safety net of care and support for young people at risk. The youth workers within this new Youth Outreach Project will have the challenging task of attempting to assist marginalised young people to become a part of the

mainstream community with all of its attendant advantages—employment, hope, belonging, trust, love, security and accommodation.

Eckersley (1992) recently commented that, for marginal young people:

> the ethical sense is rooted in a social sense, but that social sense is very limited, very transient, and very fragile. Lacking a broader sense of "the community", many young people have difficulty in establishing an ethical framework which has application beyond the boundaries of their own immediate circle of friends.

We all operate to a greater or lesser extent within this form of cultural relativist ethical framework. Our shared cultural and moral values form the basis of law. One of the challenges of the "Community Care for Young People" project will be to penetrate the circle which Eckersley describes and inject it with a much broader social and moral sense. Of course this can only happen by engendering in the young people involved the capacity to take responsibility for their actions and by making available to them the mainstream benefits and services enjoyed by the rest of the community. If we dehumanise and marginalise young people it can be no surprise to us if they behave without humanity or respect for social and community institutions, including the law.

The Fitzroy YouthCare Project

The Fitzroy YouthCare Project, established in 1990, was conceived initially as a suicide prevention project but broadened to become a project addressing young people at risk of self-harm. This decision was strongly underpinned by a report on youth suicide by the Australian Institute of Criminology for the Department of Employment, Education and Training (Mason 1990 unpub), which provided support for the notion that youth suicide should be seen as an end point on a continuum of high risk and self-harming behaviours. Goldney (1992) "The Prediction of Suicide", argued that the prediction of suicide was like tossing a coin—49.7 per cent was the highest rate of prediction which (under perfect circumstances) might be expected.

The Fitzroy YouthCare Project developed on the premise put forward by Dr Bret Hart that if the coin metaphor were to be replaced by that of a dice we could tackle a many-sided problem comprehensively: suicide attempts, offending behaviour, alcohol and drug abuse, experience of sexual, emotional or physical abuse, homelessness and social marginalisation became the six-sided selection criteria for young people to be involved in the project. YouthCare has adopted a dual strategy of establishing peer support structures for its participants (taking a range of forms determined by the needs of peer groups) while at the same time undertaking a community development function, strengthening the capacity of local services to respond to youth needs. It will surprise no-one that young offenders have been a core target group of the project and that one of its highlights was conducting a state-wide cricket tournament between police teams and young offenders in July of this year.

The authors believe that this two-year project has been a tremendous success, but the jury is out until December when a final evaluation report will be delivered. One of the achievements of the project has been its capacity to identify and activate forums in which marginal young people who feel rejected from school and, perhaps families, may receive some compensating affirmation most notably through their peers.

Although the project is now winding up, there will be many outcomes and activities generated by Youth Care which will outlive it. These include:

- the continuation of a young single mums netball team the "All-Rounders";
- a cricket team comprising many young ex-offenders and drug users "the Legends" has corporate sponsorship to continue competing indefinitely;
- interest from a corporate sponsor to make 1992's young offender/police state-wide cricket tournament an annual, national event in future years;
- ten non-English speaking background young people educated as peer educators and up to four hoping to present a paper to a national conference on community health next year;
- a young people's health service established at Fitzroy Community Health Centre continuing to operate one night per week with the support of workers and volunteers;
- young people's relations with police and cooperation between police and youth workers greatly enhanced according to local police officers; and
- young people no longer considered a major threat to community safety according to the most recent public quarterly forums held by the Community Health Centre in contrast to opinions expressed before the project began.

Conclusion

To an extent, projects such as YouthCare and the Youth Homelessness Taskforce aim to restore young people to school or to families or, if this fails, to find a valid third option. This is very much the role which we see for youth work in working with young offenders; to find some kind of backdoor through which to bring young people back in touch with the community and to assist them to reclaim their own lives.

The authors would like to conclude with some observations on the qualities required of those who wish to work effectively with alienated and marginal young people. This paper has emphasised the importance of workers having a strong personal commitment to the young people in their

care. It has also maintained that the young person's ability to consolidate and build on their strengths and move forward in their lives will depend on the stability provided by sustained support.

Programs such as "Inside-Out" and the Brosnan Centre emphasise the need for a partnership between the worker and young person. Whilst it is often true that it is a relationship with a youth worker which provides the young person with the skills and spark to begin to restore some sense of future to their lives, this must be achieved through a partnership in which the young person is allowed to articulate their own goals and in which the worker demonstrates support through the effort to assist the young person to achieve those goals.

Youth workers are often special people, but they are no different to any other profession in including amongst their numbers some people who have unfulfilled emotional needs of their own. It is beholden on the profession, in working with young people as vulnerable as those described in this paper, to ensure that the lines of their relationships with young people do not become blurred to the extent that achieving the most positive outcomes for the young person ceases to be the unambiguously central reason for such relationships to exist.

References

Alder, C. 1991, "Victims of violence: the case of homeless youth", *Australian and New Zealand Journal of Criminology*, vol. 24, no. 1.

Alder, C., O'Connor, I., Warner, K. & White, R. 1992, *Perceptions of the Treatment of Juveniles in the Legal System*, National Youth Affairs Research Scheme, Hobart.

Brady, M. 1992, *The Health of Young Aborigines*, National Youth Affairs Research Scheme, Hobart.

Burdekin, B. (Human Rights and Equal Opportunity Commission) 1989, *Our Homeless Children*, Report of the National Inquiry into Homeless Children, AGPS, Canberra.

Chamberlain, C. 1990, *The Information Deli: An Evaluation of the First Six Months*, Community Services Victoria, Melbourne.

Chiles, J., Miller, M. & Cox, G. 1980, "Depression in an adolescent delinquent Population", Archives of General Psychiatry, vol. 37, pp. 1176-84.

Eckersley, R. 1988, "Casualties of Change: Social and Economic Issues Affecting Youth", *Youth Studies and Abstracts*, vol. 7, no. 4, November.

---------- 1992, *Apocalypse No!: Youth and the Challenge to Change*, July, Essay Series, Number 1, Australian Commission for the Future, Melbourne.

Fisher, T., O'Malley, P. & Leigh, A. 1992, *Alternative Dispute Resolution: Strategies for Dealing with Young Offenders*, August, National Centre for Socio-Legal Studies, La Trobe University, Bundoora, Victoria.

Frances, A. & Blumenthal, S. 1986, "Personality disorders and characteristics", Paper presented at National Conference on Risk Factors for Youth Suicide, 8-9 May, Bethesda, MD.

Frankston Dispute Settlement Centre 1992, *Victim Offender Mediation Program*, Frankston Dispute Settlement Centre, Frankston.

Goldney, R.D. 1992, "The prediction of suicide", in *Preventing Youth Suicide*, Conference Proceedings No. 13, ed. S. McKillop, Australian Institute of Criminology, Canberra.

Hatty, S. & Walker, J. 1986, *A National Study of Deaths in Australian Prisons*, Australian Institute of Criminology, Canberra.

Hirst, C. 1989, *Forced Exit: A Profile of the Young and Homeless in Inner Urban Melbourne*, Community Services Victoria and the Salvation Army, Melbourne.

Howard, J. 1992, "The crushing of hope? Youth death in detention centres and adult custody", in *Preventing Youth Suicide*, ed S. McKillop, Conference Proceedings No. 13, Australian Institute of Criminology, Canberra.

Kosky R.J., Sawyer, M.G. & Gowland, J.C. 1990, "Adolescents in custody: hidden psychological morbidity?", *Medical Journal of Australia*, vol. 153, 2 July 2.

Lamond, D. 1982 (Unpub.), Depression and Self-Perceptions of Control in Clinical Depressed & Delinquent Adolescents, Macquarie University, BA Hons. Thesis, Sydney.

Leary, D. 1990, "Fast cars don't kill me: marginalised young people, HIV & Suicide", in *Preventing Youth Suicide*, ed S. McKillop, Conference Proceedings No. 13, Australian Institute of Criminology, Canberra.

Mason, G. 1990 (unpub), Youth Suicide in Australia, Department of Employment, Education and Training, Canberra.

Newman, T., Dodds, M. & Barkley, M. 1991, *Waiting for the Great Leap Forward: An Evaluation of the Crossroads Interdepartmental Project*, Community Services Victoria and the Salvation Army, Melbourne.

Raphael, B. 1988, "Youth Health—Who Cares?", *Youth Studies and Abstracts*, vol. 7, no. 4.

Robson, B. 1992, *Sexual Assault, Homelessness and the Law—Rough Justice*, Youth Homelessness Taskforce and North East Centre Against Sexual Abuse, Melbourne.

Salvation Army Crossroads Network 1992, *Hard Times : Families in Crisis*.

Sawyer, M., Meldrum, D., Tonge B. & Clark J. 1992, *Young People and Mental Health*, National Youth Affairs Research Scheme, Melbourne.

Shaffer, D., Garland, A., Gould, M., Fisher, P. & Trautman, P. 1988, "Preventing teenage suicide: a critical review", *Journal of the American Academy of Child and Adolescent Psychiatry*, vol. 27, no. 6, pp. 657-89.

Shafii, M., Carrigan, S., Whittinghill, J. & Derrick, A. 1985, "Psychological autopsy of completed suicide in children and adolescents", *American Journal of Psychiatry*, vol. 142, pp. 1061-4.

Tuskan, J. & Thase, M. 1983, "Suicide in Jails in prisons", *Journal of Psychosicial Nursing & Mental Health*, vol. X21, no. 5, pp. 29-33.

Waters, K., Eldridge, D. & Sheehan, G. 1991, *Unfinished Business*, Crossroads Youth Network, Ascot Vale, Melbourne.

LOGAN YOUTH LEGAL SERVICE ¾ WITHIN AN INTEGRATED SERVICE FOR YOUNG PEOPLE

Lawrie Moynihan

"Justice is lost, justice is gone,
justice has died and left me alone."

David Trulson, 16 years, Feral Arts Workshop, 1992.

THIS PAPER WILL BRIEFLY OUTLINE THE HISTORY, PHILOSOPHY AND THE process which this organisation employed to meet the needs of young people in our community.

As young people are the primary focus of the organisation, the paper will examine a recent project which demonstrates the need for an integrated approach. This program had the theme of "Social Justice" and was conducted jointly with Feral Arts (a Community Arts group), Centre Education Kingston and Eagleby, and Youth and Family Service (Logan City) Inc.

The young people involved in this project were asked to nominate all the issues which affected them based on the theme of social justice. Over one hundred issues were elicited and then broken into categories which included employment and unemployment; relationships and domestic violence; health; social security and other government departments; the local community; police and the legal system.

The young people in this project noted that many of the issues raised could be placed into a number of categories. They also concluded that many of the issues were inter-related and formed a complicated web of life in which many young people felt powerless and trapped. Numerous young people who participated in this project indicated that many of these issues were influential in their offending behaviour. For some disadvantaged young people, offending appears to be neither a high nor a low point in their lives, but often just a part of life.

The success of programs which only deal with one facet of a young person's life will largely depend on the support that that young person

receives through other avenues such as family, friends, peer group, school or work. Unfortunately, all too often, these support systems are not meeting the needs of many young people.

Logan City

Situated between Brisbane and the Gold Coast, Logan has recently become Queensland's second largest city with the fastest population growth rate in the State. There is a high proportion of families living in public housing and dependant on Social Security. Some of these families are third generation welfare recipients. Over 45 per cent of the population is under the age of twenty-five years (Australian Bureau of Statistics 1986).

The Service

Logan Youth Legal Service is a Community Legal Centre contained within a larger community based organisation, Youth and Family Service Inc.

Logan Youth Legal Service provides support to young people and their families, and through an integrated service, addresses other needs of the young person.

This innovative approach was highlighted in the report *Our Homeless Children* compiled by Commissioner Brian Burdekin (1989, p. 214).

> It is now an example of a community established to respond to the needs of homeless and "at risk" children and young people in its local area. It is an "integrated service". Its programs include the provision of medium and longer term accommodation, sharehousing, employment programs, street contact programs, literacy programs, woman's groups, parent survival courses, court work, a truancy program and programs for young offenders.

In 1983, three Christian Brothers moved to Logan City, and with a handful of other individuals became involved in the local community. After much consultation they were able to identify some of the issues and problems faced by the members of this community. They began applying their expertise, time and energy in assisting the community into action.

Some of the issues encountered were high unemployment; high truancy; low nutrition and health standards; few parenting skills; domestic violence; low education; accommodation problems; poor legal representation and generally a lack of social justice. It became obvious to those involved that individual people often experienced a number of problems simultaneously. For example, a young person with a legal problem may be unemployed or truanting, experience family problems and have no secure accommodation. It was recognised that a holistic approach was required to meet their needs.

An education centre was started which attempted to meet the needs of those young people who did not fit into, or were rejected by the current system. Today it is known as the Centre Education Program and caters for twenty-five students. In 1992 a second school commenced to address the growing need. These schools provided a positive environment in which

marginalised young people can obtain a formal education, and also provide individual and family support and address many other issues such as accommodation, health, finance and legal needs.

Other programs were also formed in an effort to become an integrated community based service to address the many needs of this community. Youth and Family Service (Logan City) Inc. (YFS) was incorporated in 1986 and has continued to develop. Youth and Family Service now employs over twenty full time staff and a large number of sessional counsellors. This service presently operates five major sections.

A range of accommodation is provided for young people from supported medium term accommodation through to semi supported share houses to independent housing. Presently this service can accommodate up to forty young people at any one time.

"Youthlink" is a program which provides structured activities for the young people during the day. In addition to the literacy and numeracy program the young people discuss issues affecting them such as unemployment, housing, health or social justice. With the assistance of Feral Arts, a community arts company, the young people present these issues via a range of media such as video, songs, posters and T-shirts.

The health program provides a direct medical service from both a fixed and a mobile clinic, education and referrals, as well as youth worker support. It is able to meet the young people on the street and wherever appropriate.

"Options" is a program which provides counselling, parent-adolescent mediation and domestic violence programs. Members of the community were trained in mediation skills and are employed on a sessional basis. A new project has commenced which will work through the schools to assist young people in recognising issues and assisting them into taking positive action.

Logan Youth Legal Service, the remaining part of YFS, is a Community Legal Centre for young people under eighteen years of age and employs one solicitor and two youth workers. This service provides legal representation and advice, education and law reform, and youth worker support for young people and their parents who are in contact with the law.

Two programs which highlight this integrated approach are the "Parent Support" and the "Street Contact" programs. The "Parent Support" program was an initiative of the legal team and while accessing different sections within YFS over a two-year period formed an independent organisation which was incorporated in 1991. New programs are presently being planned.

The "Street Contact" project has workers from different sections working together in a detached youth work style to provide a more effective service to young people who might not otherwise access this agency. Having accommodation and legal workers together on the street, for example, allows for an increase in the identification of young people in the "at risk" group and assists in the increased provision of information and more effective outcomes.

The advantage for a solicitor working within this integrated process is the development of an increased information base which he or she can access in order to contribute more effectively to the legal process. The advantage to other workers is increased accessibility to specialised legal information regarding young people.

One of the difficulties in the development of such a large organisation is the concern that the organisation may lose sight of the community's needs and become set in its ways. It is therefore important that we constantly seek ways to include young people into the process as a referral source and regularly evaluate our progress. To address this concern, we have recently completed an organisational development plan which will guide and challenge our service as we progress towards 1996.

Working with Young People

Most of the young people we work with have been disadvantaged in many ways, isolated and alienated within society. As expressed in the opening quote, many young people feel they have been victimised and rejected over and over. The issue now preventing them from accessing services is that of trust. Halstead, in her report, Young People as Victims of Violence (1992), noted that this alienation from society may become a state which in turn prevents reintegration.

The basic problem remains that even government workers with the best of intentions may be unable to communicate with young people for whom self-respect and status are inextricably linked to rejection and authority.

One of the youth work models YFS employs is that of a "Key worker". Once a worker has formed a relationship with young people he or she is often in the best position to assist that young person in meeting further needs. Workers within the legal service focus on legal needs and the court process first, and then identify other social factors relevant to the young person and assist them where possible.

The integrated service now presents many options. While working with a young person a worker may access information from other parts of the service on his or her behalf, or introduce the young person to the other workers, or alternatively suggest the young person access these other sections independently.

It appears that young people access further services within this agency more readily than services outside for various reasons. A proportion of trust which has been developed between the young person and the individual worker may be transferred to other workers within the same section, and again to other sections of the agency. Young people will expect to be treated in a similar manner by all workers, and may feel safe in a stable environment created through the common philosophy of this agency. Another reason for young people utilising the services of this agency is accessibility, due both to the close proximity of the different programs and also to the close working relationships of the staff which facilitates quick and appropriate referrals.

With a philosophy which respects a young person's right to make decisions which affect his or her life, information and referrals to outside agencies are important processes. The significance of offering support to the young person should he or she wish to access these outside services cannot be overlooked. Many young people, having been referred to organisations, fail to make contact with them and they become lost in the system. Young people referred to the legal service for example, often do not make appointments

themselves as they may forget or not understand the process, feel intimidated or scared by solicitors or feel it is a waste of time. This task is often out of their life experience and appropriate support is essential.

It is crucial throughout this process to continually respect a young person's right to confidentiality. Even amongst staff of the agency, efforts are made to withhold identifying information or personal details until permission has been granted by the young person.

One of the concerns a holistic organisation such as this may have, is the risk of young people becoming overly dependant on the service. It is important therefore continually to focus on and develop the contact and supports which the young person may have outside the agency.

An Integrated Community

An organisation which monopolises service delivery may not be able to meet the needs of such a diverse population. It is therefore important that not only should a range of services exist within the community, but also that young people are free to make choices in decisions affecting them. In Logan City for example, young people have access to legal aid, duty solicitors, private solicitors, an Aboriginal Legal Service or the Logan Youth Legal Service.

In Logan City there are a number of organisations which work together in an integrated effort to assist young people. The common forum which facilitates this approach is the Youth Interagency meetings which are held monthly. However, outside these meetings the philosophy continues through regular contact with workers and through other formal community meetings such as the Court Management Group and Youth Crime Prevention Projects. It is also not uncommon for a number of workers representing different agencies to meet with a young person in an effort to coordinate resources to suit the individual best, or, as in the case of the social justice project mentioned at the beginning of this paper, agencies may coordinate their resources for a common project.

The Logan Youth Legal Service, in an effort to increase accessibility, has offered the services of the solicitor to operate from other agencies in the Beenleigh and Brown's Plains areas. Young people from these locations would otherwise find it difficult to travel to our office. Other benefits to this strategy will be an increased awareness of young people's legal needs by workers in other areas, more appropriate and successful referrals in both directions, and the support and follow-up processes may remain with the agency with whom the young person has positive contact.

Conclusion

This integrated approach provides an opportunity for workers with young people to obtain a broader understanding of the needs and experiences of this age group. While respecting young people's rights and dignity, it provides a wide range of opportunities allowing them the freedom to interact and make choices. For the broader community the benefits are seen in the increase in information sharing and an opportunity for resources to be shared. The

overall aim of this process is to bring justice back into the lives of young people.

References

Australian Bureau of Statistics 1991, *Census of Population and Housing 1991*, Basic Community Profile Data, Australian Bureau of Statistics, Canberra..

Burdekin, B. 1989, *Our Homeless Children: Report of the National Inquiry into Homeless Children*, Human Rights and Equal Opportunities Commission, Australian Government Publishing Service, Canberra.

Halstead, B. 1992, Young People as Victims of Violence, Discussion Paper prepared for the National Youth Affairs Research Scheme, National Clearinghouse for Youth Studies, Hobart.

Trulson, D. 1992, "Justice is lost", *No Say*, Video produced jointly by Feral Arts and Youth and Family Service, Queensland.

A MENTAL HEALTH PERSPECTIVE ON JUVENILE JUSTICE

Jon Jureidini

THIS PAPER WILL ADDRESS THE QUESTION, "WHAT IS THE ROLE OF MENTAL health, and in particular the psychiatrist, in working with young offenders?" The paper will describe how, in developing a Forensic Psychiatry Unit, we have moved away from a traditional psychiatric approach that emphasises assessment, towards a broader interpretation of our role.

The unit attempts to:

- identify a mental health focus for *therapeutic* intervention;
- apply some principles of psychotherapy to work in this setting; and
- address issues of organisational and institutional functioning.

The paper will attempt to justify this broader role for the psychiatrist in juvenile justice in the context of work in partnership with the Department for Family and Community Services.

Traditional Model

Psychiatrists are quite good at recognising depression, differentiating drug withdrawal from psychosis, and even at identifying those young people at risk from suicide. We can offer a range of discrete interventions, such as the prescription of drugs, or we can authoritatively state that "this kid does not have a psychiatric disorder" and thereby justify a graceful exit.

There are two disadvantages of such an approach. First, residential carers and others often continue to regard the young person as "crazy" in spite of negative pronouncements from psychiatrists.

Alan was one such young man. When I met him in a juvenile detention centre he had been seen by six different psychiatrists in relation to offending and care issues. No psychiatrist had seen him more than once, and each had pronounced him free of psychiatric disorder. The juvenile justice system

continued to perceive him as odd, but had not been able to engage a psychiatrist in some kind of collaboration to understand that oddness.

A second reason for rejecting the traditional approach is that "objective" psychiatric symptoms do not necessarily correspond well to levels of distress or dysfunction. For example, of two people who commit a violent crime, who is healthier —the one who feels remorse about it, or the one who lacks remorse? The one who is remorseful is more likely to tell a story that can be construed as representing symptoms of depression or anxiety, while the colder, remorseless individual is often dismissed as having a "personality disorder".

Darryl is a fourth generation sex offender. His great grandfather sexually abused Darryl's grandfather, who abused Darryl's father, who abused him. When I met Darryl, he had no symptoms of anxiety, depression or psychosis, and I was unable to make a substantive psychiatric diagnosis. Yet the psychiatric perspective is important in understanding his behaviour and formulating his management (this is, of course, not to deny the importance of a sociological perspective).

Forensic Psychiatry Unit

It appears to be because of dissatisfaction with the traditional psychiatric approach that the Department of Family and Community Services was enthusiastic about establishing a Forensic Psychiatry Unit. The Unit is part of a broader Adolescent Outreach Service of the Adelaide Children's Hospital, Division of Child and Adolescent Mental Health Service (CAMHS). The unit was developed as part of CAMHS strategy to improve services to a range of young people not well served by existing systems. As part of that strategy the unit approached the Department of Family and Community Services, which agreed to divert funds from employing sessional psychiatrists and consolidate them towards the development of the Forensic Psychiatry Unit. As a result the unit agreed to take on responsibility for:

- court reports ordered by the Judges of the Children's Court in relation to offending;
- providing a psychiatric service to juvenile detention centres;
- being available for consultation to Family and Community Services field workers, and to accept appropriate referrals from the field.

The Forensic Psychiatry Unit is a small unit with a clinical staff of less than one full-time equivalent, but with the indispensable services of full-time secretarial support. As Commissioner Brian Burdekin pointed out in opening the unit, current staffing will be inadequate to ensure our survival. So we have started on a risky course, deliberately trying to expand the traditional psychiatric role in presenting ourselves as psychotherapists and even social scientists. We do not ask ourselves, "does this person have a psychiatric diagnosis?", but rather, "can we contribute to this person's overall care and

development from a psychiatric perspective?". In so doing we risk uncertainty, anxiety and conflict. So what can we offer in the process?

Psychotherapeutic Principles

Love is not enough

It is unlikely that young offenders will be made better just by us being nice to them. In our experience, even when there is a clear mental health focus, such as unresolved grief, young offenders will rarely respond to the offer of a sympathetic ear. We therefore see the need to be more confrontational (I use confrontation in the sense of "bringing face to face", to be contrasted with rubbing the young person's nose in his problems, which is a disempowering and potentially destructive process). Of course, therapeutic confrontation can, and often does, make young people angry. It should not, however, be used to humiliate them, but rather to raise their level of anxiety about their circumstances to the point where they are more able to overcome their resistance to working for change.

I am not just talking about making young people cry. I not infrequently see young men who are very easily moved to tears, only to find that these tears are unauthentic and represent another layer of covering up of deeper, more terrifying emotions; for example, in one recent case, the acknowledgment of feelings of hatred towards the father.

Dealing with our own negative feelings

Many of the young people with whom the unit deals, have done awful things and are unattractive and unpleasant in their relationships with others. A psychotherapeutic perspective can help us to avoid our natural tendency to become impatient or dismissive. Staff who spend every day with such difficult young people often benefit from discussing their work with an outside consultant.

Sensitivity to communication

Much offending behaviour has a communicative side to it, although the communication is often difficult to read. One might find useful the metaphor of a brick thrown at a window with a message attached. Our first response to such an assault would be to protect ourselves, to feel angry about the mess and inconvenience, and to want to get hold of the culprit. All of these responses are valid, but as psychiatrists we must also pay attention to the message on the brick. Thus we must ask ourselves, what are the young people telling us by their irritating and aggravating behaviour. It is our contention that, at least in the early stages of offending, there are useful messages attached to the bricks. Perhaps it is only when we adults do not pay attention to the messages that kids start throwing bricks without them.

Recognition of the limitations of our techniques

One trouble with psychotherapy is that most young offenders are not very interested in it. Traditional psychotherapy is primarily a verbal technique and as psychiatrists we have a verbal bias, so that we need to change our techniques in working with these young people. Thus, to develop therapeutic interventions we rely on partnerships with workers from other areas with different expertise, such as teachers, residential carers and those with practical skills.

We also rely on other teenagers. The group is the setting of choice for working with adolescents, and we are much more likely to be able to make productive interventions in groups than with individuals. When available, the family is an important focus for intervention, but too often the family has disintegrated to the point where it cannot help us.

Social Psychiatry

A further extension of the role of the psychiatrist is to offer an understanding of institutions.

Continuity of care

An example is the continued frustration in most systems with long-term planning for foster placements. Many of the young people who come into the juvenile justice system have been in multiple foster placements over many years, and we all recognise the lack of security of those placements and the apparent lack of long-term planning. Yet perhaps it is organisationally impossible for welfare departments to think about, and plan for, children in time scales of years. This is not a criticism of such agencies, but rather an observation about their essential qualities. For example, with transfers, resignations et cetera, the average life of a relationship between a social worker and a client is probably substantially less than a year. Even senior positions within such agencies have high levels of mobility, and because services are decentralised, an individual may have contact with several different district offices. How can planning occur over years in such a system? Psychiatrists can make a useful contribution to this debate. We can also contribute to debates about how pragmatic and idealistic considerations should be balanced when the state contemplates taking guardianship over young people whose parents have failed them.

Therapeutic environments

A sub-population of young offenders spends a considerable time in large and small institutions during custodial sentences and in residential placements. Such environments can be made more or less therapeutic. We see it as a role for psychiatrists to recognise and comment on some of the difficulties of this task and to consult with such institutions to help create a therapeutic environment. For example, residential care workers are required to be custodians, yet are also on some levels expected to be therapists, without the

training and support necessary for this task. This paper argues that residential carers should not be expected to be therapists. It is important to emphasise that there is a distinction between, on the one hand, being a therapist, and on the other, contributing to a therapeutic environment. Residential carers are well placed to perform the latter task, and even to be therapeutic towards kids, often in a way that formal therapists cannot; nevertheless, it is unreasonable to expect a residential carer to take on specific therapeutic tasks with a young person.

The role of the psychiatrists in sentencing

The psychiatrist has a limited role to play in court procedures such as sentencing. We can provide information and process it in a way that makes it more meaningful for judges, but our role should not go much further. It is important not to overstep our responsibility for the mental health needs of young people and to enter into areas of parental responsibility and/or legal judgment.

The public face of forensic psychiatry

The media contain so much inaccurate information and poor interpretation of facts that it seems we psychiatrists should use our authority and whatever respect we command from the public to put forward a balancing point of view. While we are not trained sociologists, we can offer a psychosocial perspective.

Conclusion

In conclusion, psychiatrists are doctors not only with expertise in diagnosing and treating mental illness, but also with skills in psychotherapy and an understanding of organisational and institutional functioning which should be applied to our work with young people in the juvenile justice area. It is in this way that we hope our new service will address the very real mental health needs of young people in the juvenile justice system.

WHERE'S THE JUSTICE?: YOUNG PEOPLE, MENTAL HEALTH, AND THE LAW

Roger Hearn

THIS PAPER IS BASED ON THE INTERIM FINDINGS OF "THE YOUNG PEOPLE, Mental Health and Criminal Justice System Project" (YPMHCJS), a one-year study currently being conducted in Victoria.

The primary focus of this paper is on young people with mental health problems who have been unable to access services that adequately meet their needs. In order to highlight current service gaps, it has been useful to look specifically at a particular group in society that has always had trouble getting services—young people who have broken the law. This paper therefore has a particular focus on young people with mental health problems who have had some sort of contact with the criminal justice system. First, however, it will be necessary to look at existing mental health services for all young people. The gaps in services that result in some of these people being caught up in the criminal justice system will then be examined.

The conclusions raised provide us with a useful critique of the deficiencies in our existing mental health services. Some of these are related to a lack of resources. Young people are seen as a low priority when it comes to the provision of services. The process of deinstitutionalisation has meant fewer inpatient services and a greater reliance on community based support services. For young people, however, these services have not been forthcoming.

The location of existing mental health services is usually within institutionalised settings and based on a medical model. The institutionalised nature of psychiatric services has often resulted in an inflexible response to some young people, and a series of gate-keeping measures that can prevent access. Those affected by this include the homeless, young people from lower socioeconomic areas, and substance abusers. Many psychiatric services also have a narrow, medicalised view of mental health. While some young people have significant mental health problems, they are often not able to access adolescent psychiatric services because they are deemed not to have a "diagnosed illness".

The existing gaps in services for young people can have three major implications. First, young people can be caught up within the adult psychiatric system, a system that is ill-equipped to deal with their needs. Second, young people without access to adequate services are driven increasingly to a crisis point that can result in suicide. Finally, many of these young people, denied support through the mental health system, can find themselves in contact with the criminal justice system. This system is not equipped to deal adequately with these young people. The ignorance of mental health problems prevalent in the general community is reflected in all levels of the criminal justice system. Current legal process does not provide a context for young people's mental health problems to be explored adequately. This can result in young people with mental health problems being caught up in the criminal justice system. This places further barriers to young people accessing appropriate mental health services.

Services for Young People With Mental Health Problems

Mental health services traditionally have been offered in specialist, state-run psychiatric facilities. With the moves towards deinstitutionalisation, however, there has been a reduction in inpatient public adolescent psychiatric services. Whilst deinstitutionalisation has led to fewer places in psychiatric units, this process has not been followed up adequately with community based support services.

It should be noted that the community, when well resourced, is the most appropriate place to provide services for young people suffering from a range of mental health problems. Few young people require specialist psychiatric services with inpatient care. However, mental health budgets in the State of Victoria continue to reflect an emphasis on inpatient care. Currently, around 80 per cent of funding is still geared toward the large state-run institutions. Only 2.6 per cent of the mental health budget goes to the community managed support services, with only a few of these services offering any programs for young people. This means that support services for young people often are not available, or are inadequately resourced. Moves toward deinstitutionalisation are to be applauded, but only when the process is accompanied with a genuine shift in resource allocation.

Young people with mental health problems and psychiatric services: the gate-keeping strategies

Some young people are at an extreme disadvantage when it comes to locating mental health services that meet their needs. Many of Victoria's decreasing public adolescent psychiatric facilities appear to be inaccessible to young people who are homeless, who come from lower socioeconomic backgrounds, who are from broken families, or for a range of other reasons. This is disturbing, given that research has suggested that the young people who are traditionally excluded from services have a higher incidence of mental health problems (Elliot et al. 1989).

Socioeconomic factors and mental health service provision were highlighted in "The National Youth Survey", a longitudinal study of American youth. The study found that lower class young people have a higher identifiable incidence of mental health problems than middle-class young people. However, it found that the middle-class youth utilised mental health services more often than lower class youth (Elliot et al. 1989). These findings were supported by a Western Australian study (Cook 1988), which discussed improvements in child and adolescent psychiatric services, but highlighted young people who were socially disadvantaged as not utilising these services.

Institutional settings—a major deterrent for young people

The traditional setting of the majority of the State's adolescent psychiatric services is medical and institutional. Many of the institutions are large, or they are placed within general hospitals. As a consequence this places restrictions on some young people, who can find it difficult to access services so located. The medicalised nature of many of the adolescent psychiatric services provides a major deterrent for some young people. These include formalised admission procedures and lengthy waiting periods. Many adolescent psychiatric units consulted in the study had waiting periods of two to three months. Homeless young people who may have difficulty when it comes to making appointments in the long term, or who are put off by formalities, are at a particular disadvantage.

Finally, access to the larger hospital-based services seems to be geared more to adults, either parents or service providers. This is based on the location of the services and the procedures for entry. It would take a very motivated young person to access these services without the support of a well informed adult.

The family in treatment

Adolescent psychiatric services have traditionally required that a patient's family is involved in therapy. Although said to be changing, this still appeared to be the preference of most of the adolescent psychiatric services consulted during the study. This is based on the assumption that treatment is only really effective when the family is involved. This reliance on family poses a number of problems that can prohibit access to services for some young people. A commitment from a family to be involved in treatment implies a time and money component. For people from low income groups these costs could be a significant prohibitive factor.

Another problem with a reliance on families in treatment occurs if you do not have a family, or if your family is just not interested in being involved. A young person may also have good reasons for not wanting his or her family to take part in treatment. For example, homeless young people forced to leave the family home because of physical or sexual assault may have grave concerns about involving an abusive parent in treatment. Such a requirement restricts the choice of service available to young people. It could also be argued that for many young people the family has ceased to be the most

significant influencing factor in their lives once a certain age has been reached. Often a young person's peer group has a far greater impact upon him or her.

The secure and stable home environment

The requirement by most of the adolescent services that a young person have secure housing before treatment is offered is another measure that can keep some young people away from services. The importance of secure housing cannot be under-estimated when it comes to a person's mental health. Generally, it would be desirable for a young person to have a stable home before treatment commences. However, sometimes this is not possible. For some young people a mental health problem might need to be addressed before they are able to access a housing service; for example, in cases where a person has extremely challenging behaviours. Overall, this factor has the tendency to encourage Community Services Victoria (CSV) and psychiatric services to avoid taking responsibility, placing the young people concerned in a "Catch 22" situation. This effectively excludes them from any service.

The issue of guardianship

For the adolescent services which are (reluctantly) prepared to admit young people where there is no family involvement, the issue of guardianship is another prohibitive factor. There is a requirement that a young person has a guardian who can take responsibility where necessary. CSV has the power to take on this role, particularly in cases where there are protective issues involved, but is often reluctant to do so.

Some organisations consulted during the YPMHCJS study discussed CSV's reluctance to deal with protective issues after a young person had turned fifteen years of age. The reluctance was amplified when a young person had been caught breaking the law. Current Victorian legislation means that seventeen-year-olds are not eligible to have guardianship vested by any department. For young people who do not have the active involvement of a parent, this can pose significant problems. There is a reluctance by adolescent services to admit people on an involuntary basis (which is what is required if a parent is unwilling or unavailable to provide consent), hence there is a tendency for this group of young people to be denied services at these facilities.

Mental health services for young people awaiting legal proceedings

Another major concern identified during this study was the reluctance by adolescent psychiatric units to accept young people awaiting legal proceedings. As will be discussed later, this can result in some young people being unnecessarily detained within the criminal justice system. What was particularly disturbing was that this practice can also extend to young people who have been victims of crime (for example, survivors of incest). This was on the basis that a young person may be removed from the family environment if CSV were to become involved. It was also felt that allegations needed to be addressed in court before treatment could be offered.

Inexcusably long waiting periods for psychiatric services also had the effect of streaming some young people with mental health problems into the criminal justice system. In one instance, a fifteen-year-old male was involved in a serious shooting. He was identified as having a serious mental health problem and being a potential danger to both himself and the community. The magistrate deferred sentencing for three months until he had sought psychiatric assistance. However, when he was referred to the local psychiatric unit he was placed on a three-month waiting list.

To exclude young people in these situations goes against the United Nations Charter on the Rights of the Child, of which Australia is a signatory. It also contradicts the Victorian Government's social justice strategy in relation to providing equal access to services.

Other deterrents to adolescent psychiatric services

Other barriers also exist for young people with "dual disabilities". Young people who have an intellectual disability coupled with a mental health problem, are often excluded from services at adolescent psychiatric services. The situation is often worse for young people with borderline intellectual disabilities. These young people can find themselves trapped between two systems and receive help from neither.

Age can be another barrier to access. Many adolescent services do not see young people in the seventeen to eighteen-year-old bracket.

Similar problems also exist for young people who are substance abusers and who have a mental health problem. Given the close link between substance abuse and crime, this service gap increases the likelihood that a young person's needs in this area are met inappropriately through the criminal justice system. The nature of the state's adolescent psychiatric units usually means that they are unable to provide a service for young people exhibiting aggressive behaviours. As will be described later, this can result in young people entering the adult psychiatric system.

A fifteen-year-old male who, at the time of contact, was being discharged from an adult psychiatric facility was deemed unsuitable for an adolescent psychiatric service because he was "too young". The young person was on probation and facing other charges. He had no stable home environment to return to. It is easy to see how this young person could find himself within the juvenile justice system. He was suffering from a severe mental health problem that had in the past contributed to his offending behaviour. Without support and a home, it was unlikely that he would last long before coming to the attention of police.

Personality disorders

During the study, a number of youth supervision units reported that in some cases the label "personality disorder" was being placed on their clients. This often had disastrous results for the labelled young person. In one case, a young person had previously been hospitalised in an adult psychiatric unit and assessed as "schizophrenic". After a stint of law-breaking he was given a sentence in a youth training centre. A referral was made to the psychiatric

unit he had previously attended. However, the young person was now assessed as a "sociopath" by this unit and therefore was not seen as suitable for treatment. Whilst it is not possible to determine the appropriateness of these assessments, it seems possible that a person's mental illness could be cast as a personality disorder as soon as that person offends.

The Garry David case has also begun a debate that has seen a further withdrawal by mental health professionals from "treating" people with personality disorders. No longer defined as "mad" by the 1986 Victorian Mental Health Act, the response of psychiatrists to people with the sometimes dubious title of "personality disorders", has been to refuse treatment. These people are now seen to fit into the domain of the criminal justice system. The Victorian Law Reform Commission's (1990) report on this subject discussed the importance of not refusing hospitalisation to a person suffering a personality disorder, where other criteria are met.

Private mental health services

It is disturbing to note that more inpatient services are provided for young people in the private sector than in the public sector. This has a number of implications relating to the services received by young people. Private services exclude young homeless people and most families on low incomes because of the financial outlays required. For example, the average cost per day for Pathways, a Melbourne clinic, is over $500. It seems possible that the provision of private psychiatric services could result in different outcomes for the children of higher income earners who are caught "acting out". They may have a greater chance of being "treated" in a private facility rather than "punished" in the criminal justice system.

These deficiencies in service provision can have three major consequences, a young person will end up in an inappropriate adult psychiatric system; within the criminal justice system; or finally they may take their own lives.

The Adult Psychiatric System as a Catchment Area

A significant number of young people is ineligible for adolescent psychiatric services because of the gate-keeping measures highlighted earlier. For these young people the long-term prognosis appears bleak. In an address to the Federal Human Rights Commission Inquiry into Mental Illness, Professor David Leonard (1991) outlined the dangers for adolescents placed into adult services. These included assault by chronic patients, and the development of inappropriate behaviours including self-mutilation or violence. Treatment in such a setting could actually do more harm than good. Post traumatic stress syndrome is the name given to a condition that follows a "harmful" stay in a psychiatric hospital. The recent audit of Victoria's psychiatric services painted an even grimmer picture of the abuse faced by residents in the State's psychiatric hospitals (Health Department of Victoria 1992).

Young People and Suicide

One implication of not having a range of mental health services for young people experiencing mental health problems is that they might take their own lives. This might result from a severe mental illness. However, during the study, many youth services talked of the frustration of trying to refer a young person who was suicidal, but not seen as "mentally ill", to psychiatric services. In a number of cases young people were refused services only to attempt a suicide soon afterwards. The Australian Bureau of Statistics figures show the rate of suicide for young people aged between fifteen and nineteen, has increased 100 per cent since 1965. Suicide is second to motor car accidents as the most common form of death for young people. The suicide rate for fifteen to nineteen-year-old urban males increased by almost 100 per cent between the periods 1968 and 1988. The increase for rural youth was 500 per cent in the same period (Dudley 1992, p. 83).

The Criminal Justice System as a Catchment Area

Kosky et al. (1990) found that young people in an Adelaide youth training centre had emotional and behavioural disorders at a comparable level to young people attending adolescent psychiatric services. They found that most of the young people remanded in custody came from a "chaotic social background and were without education and family support" (Kosky et al. 1990, p. 24). Studies in the USA showed distinctions on the basis of race. Lewis et al. (1980), in a comparison between adolescents in a State psychiatric hospital and a correctional facility, found that both groups had essentially the same characteristics with regard to psychotic symptoms and offending behaviours. The study found that white adolescents were more likely to be hospitalised in the psychiatric hospital, while black adolescents were more likely to be incarcerated in the correctional facility. It would be interesting to compare these results with the situation for Aboriginal people, given their over-representation in the criminal justice system.

Some factors responsible for apprehension

Acting out resulting from a "psychotic episode" Young people who are experiencing episodes of a serious mental illness may commit offences that are entirely related to their illness. As Anne Deveson (1989, p. 169) recalls in her account of her son Jonathan's schizophrenia:

> their crimes are usually petty ones—failing to pay a bus fare, petty theft, vagrancy—the kind of crimes that Jonathan kept committing. A young man picks up a brick and smashes the plate glass window of a retail store because he sees a dinosaur jumping out at him. A young woman is repeatedly arrested for walking out of restaurants without paying because she believes she does not need to pay. She says she is the reincarnation of Jesus Christ.

Depression, aggression and crime During the YPMHCJS study, some young people linked their criminal activity with factors such as depression or substance abuse. Studies have identified young people as more likely than the general community to suffer from depression (Howard 1987). These studies also link depression with substance abuse. Depressed young people would actively seek exciting activities that were often illegal or dangerous. These activities could often be exacerbated by substance abuse. Depression can also lead to young people, especially young males, displaying aggression towards others. Young people also cited boredom as a contributing factor in substance abuse and crime.

Homelessness Young people with mental health problems make up an increasing number of the homeless population, both in Australia and overseas (for an Australian example, *see* Herrman et al. 1990).

The report by the Human Rights and Equal Opportunity Commission (HREOC) (1989) *Our Homeless Children*, found that young homeless people had a greater likelihood of being involved in the criminal justice system. This was related to the greater visibility of homeless people and hence their increased likelihood of being detected by police. Young homeless people are also forced into crime because they lack an adequate income, or because of a need for shelter, which might result in an apprehension for trespass. For a variety of reasons, these problems are exacerbated for homeless young people with mental health problems (who have a higher rate of apprehension and detention).

The HREOC report (1989) also found that young offenders, after being placed in correctional institutions, were generally at a higher risk of homelessness because of the lack of special programs on release. It also appeared to be the case for young people leaving wardship. This displays quite clearly how the state, through neglect, can aggravate a young person's mental health problems, by releasing them into homelessness. It also stamps an inevitability on a young person re-offending because of his or her lack of secure housing.

The Police as the first Point of Contact

In attempting to determine why some young people with mental health problems might be inappropriately streamed into the criminal justice system, it is useful to look at police involvement with this group.

As already discussed, mental illness can increase the risk of arrest, particularly if a person has the added disadvantage of being homeless. Several studies have displayed the difficulties faced by police in determining the incidence of mental illness when dealing with the public (*see*, for example, Teplin 1984). By not being able to identify when someone has a serious mental illness, police may have a tendency only to act on an offending behaviour.

The YPMHCJS Project is currently undertaking research to determine the level of understanding of mental illness by police in Victoria. Early

indications suggest a major need for training about mental illness. Training would need to promote skills that enable a greater understanding and awareness. However, there is also a significant need for police to have a clearly defined set of procedures in relation to dealing with this group. Where these are not available, a lack of uniformity in police responses can result. Often, however, no amount of training for police will provide alternatives to detention. At present, because of the service gap in generic youth housing and specialised mental health services, very few options exist. In particular, young people with extreme behavioural or emotional problems, but not suffering from a "diagnosable" mental illness, provide police with few alternatives. Dr David Wells, the Chief Police Surgeon, consulted during the YPMHCJS project, described attempts by police to access psychiatric services as a "nightmare", particularly adolescent services. He viewed many of the existing services as "inflexible" when it came to admitting people.

During the YPMHCJS study, police described the hours spent driving from hospital to hospital, trying to find a place for someone in an acute condition. This also included travelling to country areas when city hospitals could not be accessed. The trauma in these instances could only exacerbate existing conditions.

The Children's Court

Magistrates appear to have the same difficulty as police in dealing with this group of young people, particularly those with extreme behavioural problems. The high number of young people with mental health problems in correctional facilities suggests that magistrates have, in the past, lacked specific skills in identifying mental health problems and/or lacked suitable options regarding alternatives to incarceration within a youth training facility or prison. The lack of alternative options for magistrates was raised during the YPMHCJS study and reflected the concerns raised in other studies (for example, the Social Development Committee, 1991). In particular, young people who were described as "seriously disturbed" and who could pose a risk to society, posed significant problems.

Observations conducted during the study have shown major difficulties for young people to receive a fair court hearing. Young people had limited opportunities to speak with duty lawyers. Often young people stated that they were encouraged to plead guilty to charges they did not commit, in order to get a lighter sentence. It seems unlikely that young people's mental health problems would receive much attention in a system that allows little examination of the young person's life situation.

After the Institutions¾ Young People in the Community

Young people face a gamut of problems when they re-enter the community after a stay in a youth training centre or a psychiatric facility. These include a lack of housing, vocational and financial options. Being labelled "young offender" or "mentally disordered" excludes these young people from a range of opportunities and services available in the community. Any additional

problem or disability the young person might have places further restrictions on the community resources that are available to this group. An amazing array of official and unofficial restrictions can face a young person trying to gain access to services. These include restrictions for substance abusers, people with psychiatric problems, behavioural problems, and dual disabilities. Age is also a restriction. All too often these restrictions force the young person back in contact with the criminal justice system. The increased pressure of living in unsupported and unstable environments can also exacerbate mental health problems.

Strategies to Deal With Mental Health Problems

Society has a number of choices in the way it deals with mental health problems. Problems can be responded to when a crisis point is reached, in a residual or "band-aid" manner. Alternatively, a problem can be viewed in a more comprehensive manner that takes into account the variety of contributing factors related to mental health problems.

Structural factors can contribute to less than optimum levels of mental health for society as a whole. For example, unemployment is a situation that can contribute to or result in mental health problems. However, given the current high levels of unemployment, there is little that young people can do on an individual level to address this. The issue of homelessness is another crucial variable that can have a detrimental effect on mental health. Power imbalances based on gender also have a negative impact for some. Structural factors therefore need to be placed foremost on the policy agenda regarding how our community deals with mental health problems.

The variety of systems that interact with children and young people need to be examined and healthy outcomes encouraged; for example, relevant educational opportunities and family support needs to be available. Where intervention is necessary, different systems (like mental health and welfare systems) need to be able to interact in a positive and beneficial manner. It is also necessary to improve the relationship between the various systems to ensure that young people receive the most appropriate services. High risk areas, low income areas, for example, need to be highlighted. Finally, individuals need mental health services that are relevant to their life situation, not just for the best possible outcomes for psychiatric services. Services need to be accessible to individuals, alone or with their families or with relevant peers.

Financial cost cannot be used as a justification for a shortfall in services. The cost of keeping a young person in a youth training centre is high. Some of these young offenders go on to serve time in adult prisons. Therefore, the long-term expense that can result from not providing services that prevent people with mental health problems from entering the criminal justice system, or by not addressing young offenders' health needs once they are within the system, can be astronomical. Most importantly, the human costs can be devastating.

References

Cook, H. 1988, "Disturbed children and adolescents—whose responsibility", *The Bulletin of The National Clearinghouse For Youth Studies*, vol. 7, no. 4, November.

Deveson, A. 1989, *Tell me I'm here*, Penguin Books, Ringwood, Victoria.

Dudley, M., Howard, J., Kelk, N. & Walters, B. 1992, "Youth suicide in New South Wales: urban-rural trends", *The Medical Journal of Australia*, vol. 156, January, pp. 83-8.

Elliot, D., Huizinga, D. & Menard, S. 1989, *Multiple Problem Youth: Delinquency, Substance Use, and Mental Health Problems*, Springer-Verlag, New York.

Health Department of Victoria 1992, *Audit of Standards of Treatment and Care in Psychiatric Hospitals in the State of Victoria*, Victorian Government Printer, Melbourne.

Herrman, H., McGorry, P., Bennet, P. & Singh, B. 1990, "Age and severe mental disorder in homeless and disaffiliated people in inner Melbourne", *The Medical Journal of Australia*, vol. 153, August.

Hirst, C. 1989, *Forced Exit: A Profile of the Youth and Homeless in Inner Urban Melbourne*, Crossroads Youth Project, Community Services Victoria and Salvation Army, Melbourne.

Howard, J. 1987, " 'Life's a bitch and then you die'—depression, delinquency and suicide", in paper presented at the conference on Youth Suicide, *The Australian Experience*, New South Wales.

Human Rights and Equal Opportunity Commission 1989, *Our Homeless Children*, Australian Government Publishing Service, Canberra.

Kosky, R., Sawyer, M. & Gowland, J. 1990, "Adolescents in custody: hidden psychological morbidity?", *The Medical Journal of Australia*, vol. 153, July.

Law Reform Commission of Victoria 1990, *The Concept of Mental Illness in the Mental Health Act 1986*, no. 31, April, Melbourne.

Leonard, D. 1991, "Submission to the Human Rights and Equal Opportunity Commission Inquiry Into Mental Illness", April.

Lewis, D., Shanok, S., Cohen, R., Kligfield, M. & Frisone, G. 1980, "Race bias in the diagnosis and disposition of violent adolescents", *American Journal of Psychiatry*, vol. 137, no. 10, October.

Social Development Committee 1991, Inquiry into Mental Disturbance and Community Safety, *Young People at Risk*, First report, Victorian Government Printers, Melbourne.

Teplin, L. 1984, "Criminalising mental disorder, the comparative arrest rate of the mentally disordered", *American Psychologist*, vol. 39, no. 7.

STREET LEGAL

Roger Welsh

LAST JULY, STREET LEGAL WAS OFFICIALLY LAUNCHED IN ADELAIDE AS the pilot for a national and international program. Interest in the program has been received from Europe, New Zealand and the United States.

The Street Legal Program was developed as a reaction to statistics released by the South Australian Police Force which estimated that a total of 9,000 cars were stolen in 1989, costing the community $9m. This paper will discuss the Street Legal program, the young offenders the program is targeting, our team, its aims, our methods, and the reasons why Street Legal is succeeding where previous programs have failed.

What is Street Legal?

Street Legal is a viable alternative to "lock-up" for high profile young motor vehicle offenders. Operating from the inner Adelaide suburb of Kilkenny, the program provides opportunities for young offenders who have quite normal aspirations but whose access to their means of realising their aspirations is missing. These offenders may be subject to child abuse or the consumption of illegal substances and have dropped out of the normal education and social system.

There are two aims at Street Legal, crime prevention and offender rehabilitation.

With the aim of curbing the high incidence of motor vehicle theft, Street Legal received funding from Family and Community Services, the Attorney General's Department, Department of Employment, Education and Training and the Bicentennial Youth Foundation.

The use of drag and go-kart racing, the opportunity to gain a driving licence and building and selling a car act as an enticement for young offender involvement. The thrill of high-speed car racing is an essential hook to involve these young people. It is then that we can address such issues as drug abuse, family separation and pending court matters. Street Legal attempts also to place participants in education, employment and stable accommodation.

The program is concerned with long-term results such as giving these young people an opportunity to lead a constructive lifestyle, achieve personal stability and regain self-esteem. Ultimately, the program seeks to encourage

participants to gain employment and become responsible citizens. The team consists of eight full-time staff and includes youth workers, an administrative officer, mechanics and spray painters/panel beaters. There are also two volunteers who work with the project on a part-time basis. Each member of the program has a different role.

For example, one of our youth workers spends most of his time involved in planning the workshop activities, speedway drag racing, camps and general youth work. Another concentrates on the personal issues affecting the youths, with a particular focus on liaising with educational institutions, community employment services, police, drug and alcohol counsellors and the family. Both demonstrate that this project goes far beyond providing a legal drag racing experience for young thrill seekers and involves the ongoing social development of the participants with whom the youth workers develop and maintain a close rapport. Other members of the program undertake the responsibility to collect the participants from home and drive them to the workshop to begin their shifts either in the morning or the afternoon.

The workshop staff teach the young people involved automotive skills that include spray painting, panel beating, welding and general car maintenance. The staff are also responsible for generating outside work, which helps raise funds to keep Street Legal in operation.

It is the author's role to coordinate the team and ensure that the program is correctly administered and gains worthwhile financial support from a local tyre retailer, the RAA, the legal and insurance industries and the community generally.

The program targets young offenders aged between fourteen and eighteen who have committed offences for illegal use of a motor car. They generally have problems with literacy and numeracy, and many are Aboriginal. In the eleven months between October 1991 and August 1992 Street Legal involved fifty-five young people in the program. Of these, fifty-four were male and one was female. All participants had been found guilty of at least one motor vehicle theft; only two were first offenders and 50 per cent of the group have been convicted on ten separate occasions.

Whilst motor car thefts feature significantly in the overall group profile, there is also a high incidence of burglary, theft, assault and conduct endangering life. Most of the offenders entering the program were under court jurisdiction. Approximately three-quarters have spent time in detention and there is no doubt that several participants in the group will face detention if they reoffend.

What does Street Legal do that makes a Difference?

The Street Legal program receives young people by way of a court order with a duration of three to six months and places them on an eight to twelve-week course with two sessions of three contact hours each week. Trained mechanics, panel beaters and spray painters provide practical training for the development of these skills. The young people are actively involved in the

process of obtaining a car, restoring the vehicle and rebuilding it to a roadworthy condition.

The majority of participants have very little or no mechanical skills. Interestingly, although a significant number of young people purported to have a good mechanical knowledge of cars, it has been shown that their knowledge was in fact quite limited. In addition, the driving skills of several participants, were limited. For instance, they were often unable to tell the difference between the brake and the clutch. This was surprising, bearing in mind their active years of motor vehicle theft and high speed driving.

Six young people have successfully gained a drivers licence and five others are currently studying for their learners permit. It should be noted that 10 per cent of the group are as yet too young to obtain a licence. In addition to repairing motor vehicles they also have the opportunity of working on go-karts and Street Legal's own racing car. This provides a "fun element" to the program and has proved invaluable in establishing trust between the young offenders and the staff. In November 1991, April and June 1992, Street Legal raced their vehicles at the Adelaide speedway so that participants could experience legal, high speed driving around a professional track. However, it must be stressed that it is not the aim of the program to simply provide high speed thrills for young offenders. It is to realise a productive outcome from their efforts.

The young people are involved in the decision-making processes which affect the type of car, the date of the race day and the roles each member will play. Some are nominated to be drivers, others are involved in maintenance, while others prefer administration and "behind the scenes work".

Financially, the program needs the support of the private sector. Street Legal has taken the initiative to negotiate with local suppliers for spare parts. Again, the young people are involved in the discussions with local business proprietors. They are encouraged to provide suggestions and ideas for the development of the workshop and this is viewed as an invaluable communication experience. The local communities have demonstrated their support by donating finances and equipment. Since October 1991, the Street Legal project has received about $20,000 of equipment in donations. For example, car bodies and parts from local wreckers, workshop tools from local hardware stores and garages, new tyres from a local tyre retailer and a transport vehicle from the Ford Motor Company and State Fleet.

In April this year, the Ford Motor Company approached the program to utilise the services of three Street Legal "graduates" to test the newly fitted electronic device in the company's latest LTD series. The youths concluded that the device far exceeded the technology of any other security system available and admitted that an attempted theft of a car with the installation of the alarm would be a "waste of time and effort". In appreciation of Street Legal's assistance, the Ford Motor Company provided the program with a vehicle.

What has been achieved by Street Legal?

Street Legal has an 85 per cent success rate and early indications are that Street Legal seems to be working very well.

This figure is based on one hundred young people attending the program over a period of twelve months.

Of these, only 15 per cent have re-offended. Of the remaining 85 per cent:

- some have re-entered the education system either full or part-time;
- some have obtained full-time employment;
- some have ceased offending; or
- they are no longer involved in the abuse of alcohol and drugs.

The return of a growing number of the young people to the program at a later date on social visits to see youth workers and staff to inform them of the positive effect that Street Legal has had in their lives, is viewed as a large indicator of the success rate of the program.

However, one must also evaluate the participants in the long term. It would be of little consequence if the young people were left with nowhere to go after completing the course. It is vital that the program recognise the ineffectiveness of short-term intervention and the importance of education and employment and the need to feel wanted and appreciated.

Street Legal has been in constant liaison with the College for Tertiary and Further Education for the past eighteen months and has discussed education and training courses. If a young person expresses interest to start a course or study towards a particular vocation, the program aims for them to realise this important dream. The program liaises with TAFE and occasionally provides assistance with transport and lunches. Progress is monitored on an ongoing basis.

Street Legal sees this as vital to integrate long-term objectives with short-term confidence boosting. Without the development of trust gained through activities such as the youth camps and circuit racing, it is doubtful whether young people would accept the advice and guidance of adults who encourage education, employment, stable accommodation and the resolving of problems such as substance abuse.

Street Legal's close association with young people means that the staff are able to converse with them in their language, in a way they clearly understand. We strenuously avoid methods adopted by more traditional social workers. These young people have "been there, done that" and it has not worked. They feel confident with Street Legal and that is vital.

An offshoot of the program will be workshops on the harmful effects of illegal drag racing and high speed driving. In conjunction with an existing program at Val Halla House in Adelaide, Street Legal will involve young motor vehicle offenders in a confrontation program which will demonstrate the tragic consequences of their actions. A film depicts the carnage caused by suburban car chases and involves members of the local police force who

discuss the legal consequences, and an ex-motor vehicle offender who is now confined to a wheel chair talking about his life and the crippling accident caused by a high-speed car chase. Finally, family members of victims describe their grief.

Any community based program such as Street Legal must be able to justify itself, and while the author believes this justification should be viewed solely in human terms, there is a demand by the community that cost should also be taken into account.

During this early stage of the project it appears Street Legal costs the community far less than detention. The annual cost of Street Legal participation for each participant is $9,545 ($183 per week) compared with $90,000 ($1,730 per week)—the estimated cost of detention of one youth for one year.

In addition to cost savings it is hoped each Street Legal participant will regain self-esteem, learn a skill, have the opportunity to return to school or other studies or gain permanent employment, and minimise the stigma associated with past offending behaviour.

Conclusion

The figures and the gains in human terms present a highly desirable picture. In an independent report by the Socio-Legal Studies Departments of La Trobe University and Flinders University, Coventry and Walters (1993) found that:

- there has been a marked increase in the young people's involvement in education and employment since their entry into the Street Legal project;
- the project is very well marketed and continues to receive support from the media, local and national business enterprises and government organisations;
- Street Legal is a reputable project within the criminal justice system;
- the principles of social development are recognised by this program.

In conclusion the author believes that the Street Legal project has been an overall success.

Reference

Coventry, G. & Walters, R. 1993, National Evaluation of Youth Crime Prevention Projects, Final Report, National Centre for Socio-Legal Studies, La Trobe University, Melbourne.

QUEENSLAND'S JUVENILE CRIME PREVENTION INITIATIVE¾ YACCA¾ YOUTH AND COMMUNITY COMBINED ACTION

Michael Tansky

JUVENILE CRIME ISSUES HAVE BECOME A MAJOR FOCUS OF COMMUNITY concern in recent times in Queensland. Extensive public debate and media attention has surrounded the problem of juvenile offending, the cost to the community and public safety.

A sustained media campaign continued for some eighteen months, focussing heavily on break and enters, with claims that Queensland had the highest rates of assaults, rapes and robberies and that Queensland had become a California style crime mecca, in the grip of a serious crime wave set to double in the 1990s. Repeated school vandalism, theft and breaking and entering have triggered public calls for severe solutions such as curfews, vigilante groups, and "sending feral kids outback".

Over the past two years, public meetings have been held in numerous Queensland communities including far North Queensland, Brisbane suburban areas, provincial cities and South-West Queensland to discuss community responses to the juvenile offending.

The Queensland Government responded with the development of a Juvenile Crime Strategy, announced in the 1992-93 State Budget. This strategy has two main components, crime prevention and legislative reform. Through the crime prevention component, YACCA (Youth and Community Combined Action), a range of community programs will be established to prevent young people becoming caught up in criminal behaviour in the first place.

The legislative reform of the juvenile justice system has commenced with the passage of new juvenile justice and children's court legislation. The *Juvenile Justice Act* and the *Children's Court Act* will come into effect at a future date which has yet to be decided.

This paper concentrates on the crime prevention component of the strategy. It provides a brief outline of the development of the initiative, the principles and objectives underpinning it, the key features of the program to be funded through the 1992-93 State budget, and details of the main elements of the program.

Background to Youth and Community Combined Action

The Department of Family Services and Aboriginal and Islander Affairs was allocated responsibility to develop, coordinate and implement crime prevention programs in October 1990 although resources to enable this to occur were not provided at the time.

In October 1991, an interdepartmental working group was established to prepare options for an integrated juvenile crime prevention initiative. A whole of government package was developed for consideration by the mid-term Cabinet Budget Review Committee. In January 1992, Cabinet considered matters relating to juvenile crime and crime prevention and the Premier publicly announced the formation of a Task Force to further develop options in relation to legislative reform and crime prevention.

Consultations were held in early 1992, to gather feedback on the draft proposals for the Juvenile Crime Strategy. Amendments were made to both the crime prevention and legislative reform components of the package in response to this feedback. Feedback from the consultations indicated strong support for the Juvenile Crime Prevention Initiative, and in particular, for its promotion of local community participation in the design and implementation of the program.

The Initiative recognised the links between social and economic disadvantage and crime, and included five key elements.

- local community participation;
- involvement of police;
- school based programs;
- improved access to housing, health and labour market programs; and
- training for project workers, volunteers and management committees.

Previous Action on Youth Crime Prevention

A pilot project, which aimed to lay the ground work for the YACCA program, was implemented in June 1992 with one-off funding of $119,000. Five Juvenile Crime Prevention Action Research Projects were established in Cairns, Mackay, Logan City, Banyo and Toowoomba.

In addition, funds were provided to establish a Mainstream Youth Organisation Task Force involving youth organisations such as the Scouts and Girl Guides, Police-Citizens Youth Clubs and the Sports Federation of

Queensland. The task force is examining the interest and capacity of the state-wide youth organisations to pool their collective resources and put them behind the efforts of local community groups in order to respond to disadvantaged youth.

The Centre for Crime, Policy and Public Safety at Griffith University has been funded to develop an evaluation methodology for the program and to document some existing crime prevention activities in Queensland.

Funds Allocated to YACCA

The Queensland Government allocated funding for the Juvenile Crime Strategy in the recent State budget. The Juvenile Crime Strategy will be phased in over two years with a commitment of $4 million in 1992-93 and $6 million in subsequent years.

YACCA was allocated $1.5 million in 1992-93 and $2 million for subsequent years in the 1992 State Budget. Of this total, $1,271,000 has been allocated to the Department of Family Services and Aboriginal and Islander Affairs to fund the establishment of community projects in 1992-93 with $1,725,000 earmarked for 1993-94.

The Department of Education has also been allocated $205,000 for the development of school based programs aimed at enhancing the capacity of both schools and parents to assist young people experiencing difficulties with mainstream education. In addition, $45,000 has been allocated to the Department of Tourism, Sport and Racing to fund training activities for project workers, volunteers and management committee members.

The Goal of the YACCA Program

The goal of YACCA is to enhance the capacity of targeted communities to engage young people in planning and implementing social and economic activities which are meaningful to them, with one of the anticipated outcomes being a reduction in levels of juvenile offending.

Principles

Key principles include:

- active and productive participation in community life and the opportunity to contribute to community well-being are believed to be essential to the growth and development of young people;

- young people have the knowledge, vision and desire to participate as active partners in community life and have a right to the opportunities and resources to do so; and

- recognition of the importance of family and social networks that serve to integrate young people into the wider community.

Objectives

The objectives of the program are:

- to assist approved organisations in the provision of services and activities which support the participation of disadvantaged young people in their design and development;
- to enhance cooperation and build networks between the community, non-government organisations, local government authorities and government bodies in the development and implementation of services and activities funded under this program;
- to ensure that disadvantaged young people are provided with maximum opportunities to participate in the development of activities supported by the program; and
- to ensure that disadvantaged young people gain equitable access to services and activities in their local areas.

Program Components

Community Activity Projects (CAP)

Community Activity Projects will be established in up to sixteen areas throughout Queensland. These projects will involve broad consultation and participation from the local community in the planning, design and implementation of community activities aimed at reducing youth crime. Strategies will be established to provide disadvantaged young people with opportunities to have a major input into the shape and direction of the project.

Local coordinating committees will be established with the support of all relevant government agencies providing services in the local area. These committees will include participants from community groups, parents and young people.

The CAP projects aim to provide young people with attractive and productive alternatives to offending, and to strengthen the bond between young people and their communities.

Some suitable responses may include;

- development of supervised and self-employment opportunities such as:
  - property maintenance;
  - gardening, lawn mowing and landscaping;
  - fence painting and building; and
  - house cleaning and catering.
- skill development programs in:

- maintenance and repair of engines and machinery;
- computer literacy programs;
- learning to drive leading to the acquisition of drivers' licences; and
- stenographic, clerical and literacy programs.

- recreational activities including:
  - outdoor adventure activities such as canoeing, abseiling, hiking and camping trips;
  - sport, skateboard riding and swimming;
  - discos, bands and break dancing; and
  - modern art and mural painting.

It is expected that each project will develop a plan for addressing the needs and concerns of local young people during the initial phase of the project. In developing this plan, it is expected that each project will consult with and actively involve young people, as well as local schools, police, child care officers, youth clubs, traders and community groups, particularly those with a knowledge of the needs of disadvantaged groups in the community.

The planning phase will produce an implementation proposal identifying the target area, young people's needs and concerns which have emerged as priorities and the specific range of activities for addressing those needs. Local projects will be expected to ensure that the planning phase involves input from young women, young people with disabilities, young people from non-English speaking backgrounds, Aboriginal and Torres Strait Islander youth and young people who are homeless.

Neighbourhood Youth Projects (NYP)

Neighbourhood Youth Projects will be established in a small number of communities where no infrastructure or support for young people exists. These areas will require a higher level of resourcing and support than those locations targeted for Community Activity Projects.

The projects will bring together those adults who have the most significant contact with young people known to be likely to offend. These may include parents, teachers, police, local traders, doctors, sports coaches and relevant others.

As with the Community Activity Projects, it is expected that the Neighbourhood Youth Projects will undertake a two-phase process. The first phase will involve planning and consulting with young people and a broad constituency of government and non-government agencies, community groups and youth clubs.

During the second phase, Neighbourhood Youth Projects will have the potential to provide a level of direct service to young people disconnected

from family, school, and community support, in addition to activities with a preventative focus identified during the planning phase.

Services which may be provided under NYP projects could include helping young people gain access to housing, health and labour market programs as well as income security, legal services, family counselling, education, transport and recreation.

Involvement of mainstream youth organisations

Many mainstream youth organisations make a significant voluntary contribution to the well-being of young people throughout Queensland. By assisting these organisations to extend their skills, services, and facilities to young people at risk of offending, vital opportunities become available for these young people to participate in positive alternatives to crime.

The types of organisations which have indicated an interest in becoming involved include:

- community services organisations;
- organisations representing the interests of young people from a non-English speaking background;
- Girl Guides and Scout Associations;
- Boys and Girls Brigades;
- church based youth organisations;
- sporting and recreational bodies;
- Queensland Police-Citizens Youth Welfare Association; and
- Duke of Edinburgh Award Scheme and Outward Bound.

These groups are being encouraged, through the program, to pool their resources and put them behind the efforts of local community projects.

Evaluation

In order to gauge the impact on juvenile offending in targeted localities, and to inform future policy development, a formal evaluation will be implemented. A suitably qualified consultant or organisation will be funded to undertake the evaluation, which will be a comprehensive analysis at a program and project level. The evaluation will commence early in the first year of the program.

A specific data collection will be established, and funded projects will be required to participate in the collection. The availability of data will be essential to the evaluation of the program.

Departmental officers will support the development of projects, and will be available to local groups and management bodies to assist with organisational and target group matters as required. Through the support process, the Department will monitor the progress of each project.

Community participation

A strong partnership between government and the community will be an integral factor in the success of this program. Youth organisations, churches, service clubs, and young people will be involved in the delivery of appropriate responses at the local level. This approach will harness the resources of local government, industry, schools, youth and community organisations, churches and local residents to address the particular needs and concerns of the local community.

Local coordinating committees will be established with the support of relevant government agencies and will include participation from a wide range of community groups, parents and young people. These committees will be resourced to enable them to design and provide a range of constructive recreational, educative, and employment-related activities for young people in the local area.

Project management will vary by location and community type. For example, in Aboriginal and Torres Strait Islander communities, the establishment of appropriate management arrangements will require further consultation at the local level to identify community leaders and management structures preferred by clan and family groups in the community.

Whole-of-government approach

It is recognised that the challenge of preventing youth crime will require the combined resources of all relevant government departments, and will need to be coordinated, planned, designed and implemented in partnership with local community groups and youth organisations.

A Joint Officers Group (JOG) comprising representation from relevant government departments will be established to oversee the broad direction of the YACCA Program. The role of JOG will be to ensure that the various components of YACCA are coordinated, and that a whole-of-government approach is sustained. The JOG will work to develop an effective partnership with the community sector and ensure that the programs have access to available facilities and infrastructure. Interdepartmental collaboration in the targeted locations will be encouraged and enhanced through participation in local crime prevention committees.

Six State government departments: Education; Tourism, Sport and Racing; Housing, Local Government and Planning; Health; Employment, Vocational Education, Training and Industrial Relations and the Queensland Police Service have indicated a commitment to participate in the program. These departments will cooperate to ensure greater interdepartmental coordination in activities directed to addressing some of the social and economic disadvantages which contribute to youth crime in the areas targeted by the program. In particular, these departments will aim to improve access to employment, training, housing and health care services and increase youth participation in school life and in the community in general.

Conclusion

The YACCA Program aims to reach ten to sixteen-year-olds who are on the streets at night and at risk of offending or joining groups involved in illegal activities. Children's Court data indicates that about 33 per cent of all appearances involve young people under the age of fourteen. Therefore the YACCA Program is aimed at the late primary and early secondary school years.

Strategies are required to ensure that disadvantaged young people, particularly those groups over-represented in the juvenile justice system, are involved in activities funded under this program. The ultimate success of YACCA will depend very much on the continued and significant involvement of young people themselves at every stage of local projects. Equally as important will be the development of a strong sense of community ownership of YACCA projects. This can only be achieved through the solid support of community members and organisations and government agencies.

POSTCRIPT

In the time since this paper was presented, the YACCA Program has made significant progress. Early indications are that the Program is achieving success in key areas, namely: the continued and significant involvement of young people, the establishment of ongoing community-government-business partnerships, and the development of a strong sense of community ownership. Developments to date are summarised below:

Community based projects
Sixteen CAP projects and four NYP projects have been funded across the State. Most of these projects have now completed the planning stage and are commencing the implementation of specific activities and services in response to identified needs.

School based projects
Funding has been provided to the Department of Education to develop school based projects that will link with and complement the community based projects in the targeted areas. Grants will shortly be made to twenty-five schools.

Mainstream youth organisations
A Mainstream Youth Organisations Task Force (MYOTF) has been established to bring together major voluntary youth organisations in Queensland. Eleven organisations, with a history of commitment and involvement with young people are involved on the Task Force. Up to seven areas have been targeted by the MYOTF to develop projects in conjunction with the local community based YACCA projects.

Training
The Youth Sector Training Council of Queensland has been funded under the YACCA Program to provide training to the range of organisations involved in YACCA, that will assist projects to meet the needs of the target group, and to be responsive to the characteristics, cultural diversity and conditions of the target locations.

Evaluation
Griffith University has been funded to undertake the evaluation of the YACCA Program, and will produce a report in June 1995 which evaluates the process and impact of YACCA at the state-wide and local levels. This will be crucial in informing the review of the Program to be conducted in 1995.

YACCA is a new program and still in its early days, but the process of allowing time for planning and consultation has been applauded. The emphasis on linking young people with the widest possible range of community support appears to offer the best direction for the ongoing development of the Program.

TOWARDS A NATIONAL PERSPECTIVE ON AUSTRALIAN YOUTH CRIME PREVENTION[1]

Garry Coventry and Reece Walters

TO OUR KNOWLEDGE THE NATIONAL EVALUATION OF YOUTH CRIME Prevention (NEYCP) conducted by the National Centre for Socio-Legal Studies (NCSLS) during 1991-92 is the first such national evaluation undertaken in Australia. Accordingly, we faced the difficulties of "unchartered waters" to structure the initial design of a national evaluation of community-based youth crime prevention projects. To gain that necessary edge, we adapted some aspects of a national evaluation of delinquency prevention conducted in the United States during 1977-1981 (Krisberg et al. 1981). This was necessary, given the limited amount of time between Commonwealth funding of nine prevention projects and awarding an evaluation contract to the NCSLS. The "luxury" of planning time before projects were implemented was not available.

There are several purposes of this paper, consistent with the aims of this National Conference on Juvenile Justice:

- to provide brief descriptions of the Australian youth crime prevention projects currently being examined;

[1] This paper is based on research funded by the Commonwealth Youth Bureau. The views expressed herein do not necessarily represent those of the Bureau.

Furthermore, this paper, in part, draws upon the research work undertaken by other members of the National Centre For Socio-Legal Studies: Penny Andrews, David Brereton, Jeff Giddings, Mary-Anne Noone, Pat O'Malley and Darren Palmer. Their contributions are acknowledged by the authors.

The administrative support provided by Winsome Crewe and Mary Reilly is acknowledged and the cooperation provided by staff of eleven prevention projects is appreciated.

- to sketch the main features of the evaluation design being utilised by the NCSLS;
- to provide a critique of our evaluation research that others might consider in any future national project;
- to briefly discuss *some* of the major themes that arise from analysis of evaluation data gathered to date; and
- to propose *some* key principles for structuring future "crime prevention" policy and practices.

The 1991-92 Australian Youth Initiatives Grants Program

The Commonwealth Youth Bureau's Australian Initiatives Grants (AYIG) Program for 1991-92 was focussed on youth crime prevention. Following receipt of funding applications, nine agencies were selected for the program initiative in May 1991. The NCSLS was also contracted in this month to conduct the evaluation. This section of the paper is largely based on Coventry et al. (1992) *Rethinking Social Policy for Young People and Crime Prevention*.

According to AYIG program guidelines, of particular national importance for the 1991-92 program was provision of funding to a number of youth service agencies to assist in:

- developing new programs and/or services for crime prevention purposes;
- extending services to previously uncovered geographical areas, communities or groups of young people; and
- improving agency organisational practices and their capacity to provide relevant youth crime prevention programs.

The AYIG Program allocated $400,000 to nine youth crime prevention programs located in the six Australian States. The nine projects were selected on the premise that they would encourage youth participation in the operations of the agencies and provide services to disadvantaged young people. The successful submissions are diverse in their approach to crime prevention and offer a multiplicity of services to a broad based group of young people.

Across this group there is considerable variation of proposed project goals (for example, prevent recidivism of "petrol sniffers", improve communication skills, provide employment opportunities); programs to be conducted (for example, post-release supervision and care, theatre workshops, wilderness activities); the types of young people to be targeted by projects (for example, Aboriginal, non-English-speaking youth, offenders, non-offenders, inner city, rural) and community agencies involved in prevention efforts (for example, police, Aboriginal organisations, corrections,

housing, youth groups). According to initial proposals, the projects may be briefly described as follows:

- **Another Way,** Mount Isa, Queensland, attempts to address the problems of substance abuse and lack of self-esteem among young Aboriginal people. Recreational activities and cultural awareness are to be utilised by the project to promote self-esteem and community unity. The project also attempts to develop awareness of Aboriginal concerns and issues.

- The **Greenhill Young Offender Support Program**, Kempsey, NSW, supports young Aboriginal people. Project staff are to work closely with the justice system, participating in police interviews, providing reports for the court and supervising offenders on community service orders. A range of activities, including camps, family counselling and cultural and legal education is also provided.

- **Project Turnaround**, Riverstone, NSW, takes young people who have problems with drug abuse, sexual assault and family breakdown on five to seven-day camps with NSW and WA police officers. The camps are designed to help participants develop their self-esteem and to discuss their problems openly.

- **South Sydney Youth Services** addresses the problems associated with community alienation by providing young offenders and "at risk" youth with greater access to a broad range of services including counselling, developing support structures within the community, and assistance with education, employment, housing and welfare needs.

- **Expanding Horizons for Young People of Non-English Speaking Background**, Campbelltown, NSW, attempts to reduce crime through encouraging young people from non-English speaking backgrounds to have a positive influence on their community. Workshops and group activities attempt to increase self-esteem and reduce feelings of community alienation and resentment.

- **SWEAT (Special Wilderness Experience Training)**, Ballarat, Victoria, aims to develop the confidence and social skills of young offenders and "at risk" young people through the personal challenges they experience on wilderness trips.

- The **Play up Youth Theatre Company**, later known as the **"Rip and Tear" Theatre Company**, Burnie, Tasmania, aims to increase young people's communication skills and self-confidence by involving them in theatre.

- The **Brompton Program (Hindmarsh Industrial Training Project)**, Adelaide, South Australia, attempts to prevent crime by providing

young offenders with work skills in a simulated sheet metal factory environment. Participants manufacture goods for sale in the local community.

- The **Central Reserves Crime Prevention Program** targets young Aboriginal people across the vast Warburton Ranges, Western Australia. The project aims to provide suitable tribal mentors to reinforce appropriate behaviour and offer family support for those who inhale petrol.

In addition, two other projects funded by the Bicentennial Youth Foundation were included in the national evaluation in March 1992:

- **Street Legal¾ A Motor Vehicle Theft Prevention Program** in Adelaide attempts to redirect the "thrill seeking" associated with car theft by building a "drag car" and racing it at the local speedway. The program also offers youth work services to these young offenders.

- **Research Project into Juvenile Crime and Justice**, implemented by the Youth Advocacy Centre in Brisbane, provides information about the processes of juvenile justice and recruits young people as researchers who record the comments and observations of peers who have entered the justice system.

The Design of the National Evaluation

Parts of this section are based on Coventry and O'Malley et al. (1992) "Evaluation of Youth Crime Prevention: National Application of an Impact and Process Design". The design of the evaluation was adapted from National Council on Crime and Delinquency, Data Manual, National Evaluation of Delinquency Prevention 1977-1981.

Principle aims of the evaluation

Rarely have we found a commitment to evaluation of youth crime prevention projects by either Commonwealth or State governments. The Youth Bureau, however, officially recognised the importance of accountability of program interventions and the need to ground social policy and programs in comprehensive evaluation research of their 1991-92 crime prevention initiatives. For the NCSLS, the challenge was to structure an evaluation design that could be implemented across a number of diverse sites and which could be sensitive to variable program goals and local community settings. The primary task of the NCSLS in this context is to produce a set of national findings regarding the crime prevention initiative.

Knowledge of the precise nature of various programs and the extent of their impact on young people and community agencies facilitates an understanding of the complex issues involved in youth crime prevention approaches. The NEYCP research project attempts to build a comprehensive set of information about the operations and effects of the eleven funded

projects. Some might argue that the national AYIG program and its evaluation was structured in order to search for the panacea to the problem of youth crime—the program model most likely to achieve success. After all, the Youth Bureau had commissioned a 1990 research report, "Young People and Crime: Costs and Prevention" undertaken by the Australian Institute of Criminology, which emphasised the billion dollar figures regarding the costs of crime to Australian communities and the need for cost-effective preventative program interventions. We, however, do not share this view. On the basis of theory and evaluation data gathered thus far, the search for a cost-effective, universal community-based prevention model that can be transported from site to site across the country is both illusory and dangerous. There is great risk that resources used to implement the "model" divert attention from the fundamental disadvantages suffered by Australian young people. Narrowly conceived, the concept of youth crime prevention and its attendant program interventions reinforce the mystification of youth crime, prevention and control.

Accordingly, the NEYCP focuses on a number of key themes that have been observed across the eleven projects. Rather than a comparative analysis of these projects, the evaluation seeks to gain a collective insight of fundamental principles and processes that may structure future program initiatives which are developed, owned and implemented by local communities.

Impact and process evaluation

The project sites of the NEYCP are subject to both **process** and **impact** evaluation study. Process evaluation requires a detailed analysis explaining how projects were planned, as well as careful observation and documentation of how projects operate during the twelve-month funding period. Utilising a range of qualitative and some quantitative research methods, the process evaluation component attempts to answer national level research questions, such as:

- What are the characteristics of young people utilising project services and programs?
- What are the types of services and programs provided, and their intensity and use over time?
- What is the extent of youth and adult involvement in the planning and implementation of the project?
- To what extent are project policies and procedures modified to address more effectively the needs of the target community?
- To what extent do young people, the community and juvenile justice agencies support the projects' prevention efforts?
- What policy and program changes can be detected over time?

A central question for a comprehensive evaluation is, "What are the results of operating a project?" At all project sites, therefore, there is an effort to measure project impact. The impact evaluation component focuses on the effects of prevention intervention strategies on young people, communities, projects and other youth-service agencies. The primary research questions to be addressed in the impact phase of the national evaluation effort are:

- To what extent do projects prevent youth crime?
- To what extent does participation in project activities change young people's attitudes and behaviours?
- To what extent do projects alter juvenile justice and social service agency staff attitudes to young people and contribute to changes in organisational practices?

It is important to note that an innovative feature of the overall evaluation strategy is the analytic integration of process evaluation with impact evaluation. By relating process to impact elements, it is possible to explain impact results by referring to specific process factors. For example, one may explain how the surrounding community and social environment affect project implementation and operations, and the probable effects these factors have on project outcomes.

Furthermore, the evaluation seeks to determine the extent of project success along a number of dimensions, rather than examining only a limited set of program outcomes or relying on a cost-benefit analysis. Using this multiple measurement approach, the national evaluation may be better able to increase knowledge about what principles of prevention programs and processes bring what effects under what conditions and with what types of young people. In effect, the key task of the evaluation effort is to "tell the story" of the youth crime prevention initiative.

Conceptual framework for organising the evaluation design

As previously stated, projects represent distinct and diverse approaches to youth crime prevention. Accordingly, the evaluation design needs to be capable of reflecting such diversity, as well as being able to capture differences and similarities across the national youth crime prevention effort. Five major clusters of data dimensions guide the NCSLS's evaluation activities and provide for such flexibility. These are:

Context: the set of conditions and assumptions which define the distinctive features of the projects, including theoretical assumptions about youth crime and the socio-political environment of the communities.

Goals: the measurable outcomes of project activities and interventions. These goals are negotiated and agreed to by project staff and the evaluation team.

Identification: the techniques and criteria used by projects to define, recruit, admit young people to various programs and, in some cases, terminate their project involvement.
Intervention: the specific activities, programs and services provided by projects, including community development initiatives.
Linkages: the relationships of projects with other community agencies and social institutions, including referral networks and provision of "political" support.

Key data dimensions

The general stages of the NEYCP follow the basic phases of the projects' operations. Planning phase data establish an historical framework by which to view projects. Inquiry into planning processes and decision-making provides data about how program goals were derived and strategies for how they are to be achieved. Evaluation of the implementation phase of projects provides considerable descriptive data about the content and practice of the projects and qualities of organised program activities and services. Data are also gathered on the achievement (or otherwise) of project objectives and of anticipated and unanticipated outcomes.

To answer national level evaluation questions, the NCSLS identified major dimensions which, on the basis of available research evidence and criminological literature, are likely to shape the operation and "success" of the youth crime prevention projects. Collection of data pertaining to these dimensions, over time, provides the necessary data base to assess the national initiative. To what extent such data dimensions can be fully delineated at each project site requires considerable attention. The NEYCP "ideal" evaluation design put forward for consideration by the Youth Bureau and project grantees in May 1991 provided a framework for identifying what evaluation activities were feasible and manageable at each location. Given limited resources and the NCSLS's geographical isolation from the project sites, it has not been possible to undertake each evaluation task at each project uniformly. Nevertheless, the accumulated national data base includes substantial material on fifteen key dimensions for the projects under study:

1. **Program planning and development**

This dimension requires collection of data regarding the origins and development of projects in order to track the "projects-in-action".

2. **Socio-political environment**

This dimension refers to the existing social, cultural, economic, and political forces in the community in which the grantee agency operates. The NCSLS assumes that such environments directly or indirectly shape projects and are themselves possibly affected by project activities.

3. **Community**

Information has been obtained regarding key features of each community's history. This will lend insight into target communities' views of youth crime

prevention, the prevention projects, community needs and resources and the capacity of communities to support prevention efforts.

4. **Projects' Implicit Youth Crime Theory**

Projects differ in the sources of theory guiding their activities. Knowledge about the theoretical qualities of each project is important for understanding program structure and function. Data collected in this area include the operating or implicit project theories which guide various prevention models.

5. **Project Management**

The quality of management can affect the delivery of prevention activities, the establishment and maintenance of inter-agency relations, and the projects' reputations in the target communities.

6. **Staffing of Projects**

Staff characteristics, their work experience and their role in prevention activities data have been gathered.

7. **Project Staff Assumptions and Attitudes**

An integral part of program operations are project staff's theoretical orientations to youth crime and models of prevention. Ideology, theory, assumptions and attitudes regarding projects influence their outcomes.

8. **Project Programs**

The development and implementation of various activities and services which target young people represent the major forms of various youth crime prevention approaches. The process evaluation seeks to collect data over time on the nature and kinds of programs and services provided.

9. **Project Participant Characteristics**

Data regarding demographic and socioeconomic characteristics of young people provide a description of the projects' target groups. These "client" data include residence, gender, race, date of birth, nature of family household, family background, school status, type of employment, source of referral to project, offence and children's court history and past involvement with the agency.

10. **Youth Participation**

The extent of young people's involvement in projects, in roles other than program participants (or "clients"), is assessed.

11. **Critical Program Decision Points**

Critical program stages (for example, selection of young people, "diagnosis", review, termination, follow-up) and the criteria used at each stage by projects to determine the appropriate prevention intervention are examined. Such data concerning the decision-making processes of projects provide a clearer understanding of program delivery and utilisation by young people.

12. **Juvenile Justice System Practices and Procedures**

Many projects relate to the local juvenile justice system (JJS) in the normal course of their operation. The projects may receive referrals directly from agencies of the JJS. Projects may need to seek information, resources or support from the JJS. Individual JJS agencies operate projects providing services similar or complementary to those of the grantee project.

13. **Non-grantee Youth-Service Network**

Agencies other than the grantee in each target community may offer similar, complementary or conflicting programs to the grantees. Inter-agency relations and practices may directly or indirectly affect the projects of the national evaluation.

14. **Related Institutions' Practices and Procedures**

This dimension refers to other major institutions in the eleven communities such as schools, health and welfare centres that are concerned with young people and may maintain working relations with grantee projects.

15 **Costs**

Though problematic, an assessment of the cost-effectiveness of the units of project activities is being undertaken.

The Evaluation in Practice

While it is not our intent here to provide an in-depth critique of the pitfalls and lessons which have arisen during the conduct of this evaluation project, it is useful to consider some issues that could facilitate the organisation and evaluation practices of any future national project of this kind.

The relationships between the NCSLS Evaluation Team, Government and Projects

In addition to the NCSLS being awarded an evaluation contract (equivalent to 10 per cent of the 1991-92 AYIG program funds), the Youth Bureau structured each project's funding such that 10 per cent of each budget was to be allocated specifically for the purposes of assisting the national evaluation effort. This was an innovative initiative which attempted to facilitate collaboration between the NCSLS and local crime prevention projects.

At a meeting of all parties involved in the program and during the first round of site visits the NCSLS provided evaluation training for project staff. These sessions included an overview of process and impact evaluation and highlighted the data required for our analysis.

Not surprisingly, however, we have encountered considerable differences in the projects' practices of reporting and documentation. The diversity of management styles in the selected projects and turnover of project staff has contributed to some lack of uniformity in the data available for each project. For the majority of projects, the practice of evaluation is a foreign, if not threatening issue. Agencies find it difficult to maintain a daily commitment to evaluation procedures as they are committed to provision of programs and reviews for young people. It could appear that provision of project funds for evaluation is not a sufficient condition for ensuring uniform application of a national evaluation design.

Evaluators must always be conscious of different expectations and agendas operating within evaluation research. Governments seek accountability for their funding decisions, projects seek favourable reports for funding purposes and some evaluators experience pressure to maintain acceptable theoretical premises. This evaluation has explored, for example, the anomalies with findings based on a cost-effective analysis. Governments often expect that mathematical equations can accurately reflect "success" or "failure" in given projects. Socially useful evaluation of youth crime prevention should not be based on such rigid and rudimentary methods. The diversity of service delivery in the eleven projects exceeds the boundaries of such simplistic notions of efficacy. One project, for example, may contact seventy young people in one week, while another provides services to only three. It is the quality of individualised contact which is likely to have the greatest impact. For example, midnight visits to police cells, court appearances and assistance with health and housing, rather than short-term interventions are likely to determine a successful project intervention. Larger numbers of young people contacted does not necessarily imply money well spent.

Conducting site visits

The NCSLS has visited each site on at least two occasions. Unlike evaluation efforts which provide relatively detached reporting, the NCSLS has emphasised the participation of its members in project activities. Subsequently, the evaluation team has attended project camps and workshops and participated in group activities. This participatory approach has enhanced the NCSLS's rapport and status amongst project workers and project youth, thereby facilitating the collection of ongoing detail and interpretation of project developments.

It is important to note that the NCSLS has canvassed the views of non-project young people in many communities. Interviews have also been conducted with police, members of the judiciary, corrective services, welfare agencies, local council officers, school teachers, welfare workers, youth workers and government officials.

This evaluation has confirmed the necessity of fieldwork if crime prevention projects are to be fully documented. Whilst documentation forwarded by each project provides interesting insight into the program's history and internal organisation, fieldwork unearths the complexity of factors influencing the adequacy of service delivery.

Surveys and questionnaires

In addition to field techniques, the NCSLS has distributed several data requests. These include a community resource questionnaire pertaining to youth issues in general, and individual projects in particular. Approximately twenty-five youth service agencies in each locality of funded projects were surveyed. The variety of responses received exemplify the multiplicity of prevention approaches and opinions surrounding issues of youth crime and youth work and preventative interventions. These data also provide valuable community insights into the operations of funded projects.

A most important data collection technique is the use of intake and follow-up forms for each young person contacted by projects. These forms gather the demographic, criminal history and educational/employment status of participants, enabling analysis of any changes between "entry" and "exit" from the project. Staff members have the opportunity to write in their own words their assessment of changes to individual referrals. A sample of this database has been matched with interviews.

The politics of conducting crime prevention evaluation

This complex and extensive issue is worthy of a more detailed discussion than is possible here. Nevertheless, there are several areas which require our brief attention in order to provide broader coverage of the difficulties involved in the conduct of the NEYCP project. Some project personnel were and remain sceptical of program evaluation. This scepticism creates restrictions on full access to required data. It is our view that this negative perception of evaluation is manifested because of previous agency experiences, concerns about definitions of project "success" and ethical issues.

Some evaluations tend to be detached from the operations of the program under study and, thereby, fail to accurately record project activities. Project managers have expressed ardent criticism of external evaluators (assessors, in their terms) who present a distorted image of their programs and inaccurately record project development. Consequently, there is a criticism that evaluation remains too academic and removed from the realities of youth work. It is essential that evaluators remain in regular consultation with projects, clarify project goals, provide opportunities for evaluation feedback and participate in program activities. Such actions are likely to assist in the demystification of evaluation and contribute to alternative understandings of the role evaluators can play.

There is a pervasive view that the evaluator's primary goal is to be critical. Negative appraisals of project activities tend to be perceived as a threat to further funding and, therefore, the project's continuation. Although in regular contact with sites, it was not until December 1991, at a two-day conference, when representatives from all projects, the evaluation team and the Youth Bureau collaboratively discussed interim findings and reaffirmed our partnership approach to the national evaluation that a breakthrough was achieved. The conference accelerated the demise of pre-conceived scepticism about evaluation.

Finally, issues of confidentiality raise concerns for projects. Project staff and evaluators need to agree on a process of coding and recording information. Concerns that breaches in confidentiality may lead to the regression of the project's relationship with its client group, as well as its relationship with established networks of youth service providers in the community can impede both the collection of data and techniques of data analysis.

Themes Arising from the Youth Crime Prevention Evaluation

Obviously with the wealth of available data the NEYCP project has been able to identify a number of themes requiring attention by agencies and authorities involved in youth crime prevention. Only some of these are discussed here. More comprehensive discussion will appear in the final evaluation report.

Recruitment

Many of the eleven crime prevention projects have been in contact with young people enmeshed in the criminal justice system. Some projects focus predominantly on young offenders released from imprisonment, while others provide non-custodial options for the local judiciary. There are also projects which contact young people without criminal histories but who are perceived to be predisposed to criminal activity because of their circumstances and are, thereby, categorised as being "at risk" of offending.

The NCSLS considers the use of such terms as "at risk" and indeed "crime prevention" to be problematic. The universal application of "at risk" is nothing more than a catchcry for all marginalised, dislocated and disaffected youth. It is not solely attributable to crime and often carries a confusing and negative connotation. "Crime prevention" is also a broad ranging term. The NCSLS considers the division of the concept into primary, secondary and tertiary crime prevention to be both arbitrary and contradictory. In effect, the projects of the 1991-92 initiative cannot be categorised in this manner. In addition, the dominant discourse of crime prevention in Australia tends to ignore questions of structural disadvantage of young people, in general, and young women and Aboriginal youth, in particular.

It is our view that the social development of Australia's young people through the processes of community development and participation may be hindered with negative labels such as "crime prevention" and "at risk". Our research has confirmed that some welfare agencies, schools, parents and business enterprises have refused to become involved in programs which label young people to be "at risk" of offending. Regardless of the interactive nature and service orientation of a given program, the use of "crime prevention" sends negative images to some community groups who reject the stigmatisation of young people.

Gender

According to available data collected to date, less than 20 per cent of all young people contacted were young women. Interviews with various government and non-government sources have indicated that communities often view teenage girls posing a greater health risk than a crime risk. For example, it has been stated by several sources that girls are more prone to pregnancy than committing a car theft and, therefore, are perceived to be inappropriate for most crime prevention strategies. Crime prevention is therefore a limiting discourse. Gender imbalances in project populations may be attributed to preconceived notions of criminality. Some "crime prevention" projects deliver a variety of services, many of which are denied to young women because of eschewed notions of offending behaviour. Further, there is a tendency for projects to stereotype their activities for males and thus exclude the participation of young women.

Links with the justice system

Projects perceive that their "success" is contingent upon developing a positive rapport with police, courts and corrective services. Our research indicates that projects which have failed to liaise continually with the justice system have not maintained significance as a credible and worthwhile program in the eyes of justice system agencies. If projects provide support and/or advocacy services to young offenders it is essential that ongoing contact be maintained with key members of the justice system.

Some projects have developed working relationships with corrective services and are invited to participate in pre-release discussions with youth review and parole boards. A few projects provide court reports and sworn testimony in relation to some young people they contact. Data indicate that projects which contribute a well balanced overview of a young person's progress with case plans, void of emotionally charged language and unsubstantiated comments of praise gain the greatest credibility in court.

The majority of projects have expressed an unwillingness to have their project a designated condition of a sentence. The project's link with the justice system is preferred on a discretionary basis, although there are examples of young offenders being bailed to a project for a stipulated period. If participation in the program is viewed by the court to be positive then the matter is dismissed by the court with no further action. Alternatively, if bail is breach by non-compliance with a project activity then the young offender is subsequently sentenced.

In addition, many projects are supervising young offenders subject to non-custodial court orders. Community work and personal development programs are provided for this group, thus satisfying conditions of court orders.

Negotiating access to communities

Integral to the concept of community development is the importance of establishing community networks with a variety of government and non-government agencies. Our research has revealed concerted efforts on behalf

of many projects to establish and maintain contacts with community organisations. In those instances where community linkages have eroded, it is largely due to breakdowns in communication and a failure on behalf of project staff to inform community groups of recent developments. Maintaining a community profile is essential. Attending meetings and inviting various groups to participate in project meetings demonstrates an openness to work with others.

Youth participation and empowerment

Most projects highlighted the significance of youth participation and empowerment in their original proposals. The practical application of these concepts, however, largely has not been exercised. The extent to which young people have a stake in project management and direction is contingent upon project staff and their underlying commitment to aforementioned ideologies. Empowerment in our opinion remains a "token" concept. Projects which endeavour to implement empowerment, however, do generate close working relationships with young people whilst maintaining a reputable program before the justice system and community agencies.

Young people as commodities

It has become apparent that young people may become pawns in the politics of agency profiles and funding. We have observed young people obtaining a public profile through media reports. Positive publicity attracts community interest which often leads to greater community participation.

Agencies which provide services to young people are expressing their disdain towards government funding policies which place considerable significance on the regularity and diversity of activities/services. The struggle for ongoing funding is a reality confronting all youth service providers. There is a danger that certain agencies caught up in the "funding game" will attempt to grasp kudos by "poaching" high profile young people from other agencies. This activity naturally affects the processes of community development and most importantly can leave young people bewildered and angry.

Concluding Comments: Key Implications for Policy and Practice

For the purposes of this National Conference on Juvenile Justice, we wish to highlight a number of interim findings based on research conducted to date (*see* Coventry et al. (1992) for further discussion):

- Crime prevention projects attract more male than female participants. The parameters of prevention discourse must be broadened to eliminate gender imbalances. Crime prevention needs to be subsumed within the broader objectives of social development for all young people. We are concerned that popularised terms such as "community crime prevention" retain "crime" as the key signifier for intervention. By contrast, we argue that the primary focus should be

on broader based social policies and not crime control politics. Many projects are still engaged in a struggle to define "crime prevention", rather than going beyond its intrinsically limited boundaries. In addition, the term further denotes a negative label to those subject to "crime prevention" interventions. The rationale of "prevention" must involve the principle of integration rather than exclusion of young people through processes of criminalisation and agencies of social control. It is, therefore, essential to redefine the discourse of crime prevention in terms of social development, and youth crime as disaffection and structural disadvantage.

- Aboriginal rights need persistent reaffirmation by both government and community agencies. Promotion of the application of white Australian models of "crime prevention" to Aboriginal communities, noted elsewhere, should be avoided. Such communities require funding to initiate, develop and own their particular and localised solutions to local community problems that involve young people.

- Short-term activities and support constitute the initial interest for a large number of participants. Such activities are often of an exciting and/or challenging nature. Both activities and crisis support provide the "hook" for attracting young people into projects. It is most important that these short-term interventions be coupled with other longer-term services such as employment, education, housing, social security, health, legal advice and counselling.

- Projects which are well marketed attract greater community support. This often depends upon the entrepreneurial skills of project management. It is essential that the activities of projects are known to the surrounding community for the purposes of referral and collaboration and development of local structures capable of responding to the problems experienced by young people.

- Twelve-month "seed funding" is often too short a period to allow new projects time to develop viable programs and establish community networks. At a minimum, an 18-month period would appear more appropriate for the sustained development of project activities, with the first six months designed to facilitate program planning and effective implementation. In addition, it is important that the evaluation process commence in advance of the distribution of allocated monies to funded projects. This would enable a collaborative process to be established whereby evaluation researchers could participate in negotiations with potential projects in negotiating mutual understandings of project goals, target populations, program interventions and measures of project success.

- In the pursuit of further funding, projects often expand their activities into a broader array of interventions which may lead to contradictory theoretical parameters becoming evident. Of considerable concern are

those excursions which are politically attractive to "law and order" agendas. The diversification of service delivery must be carefully balanced against project objectives and not be influenced by popularised political responses to youth crime.

- Youth empowerment has arisen in contemporary Australia as a popular and politically attractive concept. Simply defined, it involves giving young people some stake in their immediate and long-term futures where they are provided with both an active opportunity to access decision-making processes and the power to influence the social milieu. Our research confirms that with the exception of isolated examples, the concept remains largely superficial. Young people may be consulted in minor matters concerning program activities, yet they are often not represented on steering committees or given constructive opportunities to impact upon project management.

- In our view, enhancing the social development of young people remains the single most important element of preventing crime. Integral to this concept is the importance of community development. What seems to be needed is a shift in policy focus that de-emphasises the troublesome behaviour of particular young people and instead accentuates the positive and creative citizenship of all young people. This shift necessitates institutional changes and not behavioural management.

References

Coventry, G. & O'Malley, P. 1992, "Evaluation of youth crime prevention: national application of an impact and process design", *Evaluation: Making it Work*, Proceedings of International Conference of Australasian Evaluation Society, Melbourne.

Coventry, G., Muncie, J. & Walters, R. 1992, *Rethinking Social Policy for Young People and Crime Prevention*, Discussion Paper No. 1, National Centre for Socio-Legal Studies, La Trobe University, Melbourne.

Krisberg, B. et al. 1981, *The National Evaluation of Delinquency Prevention*, National Council on Crime Delinquency, San Francisco.

National Council on Crime and Delinquency 1982, *National Evaluation of Delinquency Prevention Data Manual 1977-1981*, National Council on Crime and Delinquency, San Francisco.

SCHOOLS AND JUVENILE CRIME PREVENTION

Paul Omojo Omaji

AMONG THE KEY SOCIAL ORGANISATIONS WHICH ARE EXPECTED TO "enforce" juvenile crime prevention in modern times is the school, the others being the family, the community, and the formal justice system. This paper examines how the school plays this role in the Australian context. Specifically, it reviews various forms of school-based interventions for the prevention of juvenile crime. To put the discussion in a clearer perspective, the paper begins with a statement about where prevention now stands in justice interventions. It also underlines the strategic position of schools relative to other influences on the juvenile population. Against the background of international illustrations, the paper then outlines the school related programs in Australia which aim to minimise the drift of juveniles into criminality.

Prevention Versus Treatment/Control

Prevention before the event rather than intervention after the crime has occurred is clearly the preferred way in contemporary criminal justice policy directions. "Prevention is better than treatment" is the slogan, although the practical commitment to it is yet to be clearly demonstrated. Several years ago Lejins (1967, p. 1) made this point in the following words:

> By and large, the general public believes, and justly so, that an ounce of prevention is worth a pound of cure. When addressing a lay audience on the subject of crime, there is no surer way of provoking a round of applause than by shifting from a discussion of what we should do with criminals and delinquents to a suggestion of how we can prevent individuals from becoming offenders. Everyone is in favour of this . . . [But] in scientific and professional circles the subject of prevention has received remarkably little attention.

A quarter of a century on, not much progress seems to have been made on the path to functional prevention. Nonetheless, at the intellectual level at least, the preference for prevention in criminal justice now seems axiomatic. In contrast to a focus on treatment, a prevention focus for juvenile justice

interventions is perceived to minimise negative labelling, have a lower per capita and overall cost, be perceived more positively by parents, and provide a more fertile context for behavioural change (Potas et al. 1990, p. 70). Over the past five years criminologists in Australia have been promoting the concept of crime prevention, as Wilson (1991, p. ix) put it, "if only to counteract the obsession with using the police, the courts and the prisons to deal with crime". The development of youth crime prevention strategies in Australia, embodying nine projects which are located in six states and funded by the Federal Youth Bureau ($400,000 in 1991), is one practical sign of the shift towards prevention (*see* Coventry et al. 1992). A statement on the ongoing evaluation of these projects can be found in Coventry and O'Malley (1992).

But what constitutes prevention in criminal justice? The confusion that has surrounded the answer to this question in Australia, as in other countries, has remained a major hindrance not only to the development of the theory, but also to the practice of prevention in the management of crime problems. Lejins (1967, p. 2) conceptualised "prevention" as "a measure taken *before* a criminal or delinquent act has actually occurred for the purpose of forestalling such an act". The question that has compounded the conceptualisation is: which act is being forestalled (the first or the subsequent ones) and who is being targeted (the populace at large—hence general precaution—at-risk groups or actual offenders)? To address the difficulty, scholars have typologised prevention. For Lejins (1967, pp. 3-9), it is "corrective", "mechanical" or "punitive", corresponding roughly to general precaution, diversion of at-risk groups, and *ex post* deterrence, respectively.

In a more recent discourse, prevention is presented as primary, secondary or tertiary strategies to eliminate criminogenic causes/factors *ex ante*, divert at-risk groups, or deter further occurrence of adjudicated offences respectively (*see* Walgrave 1982). In some works these strategies are condensed into primary and secondary categories, one dealing with programs aimed to divert at-risk groups and the other with programs which prevent judicially condemned behaviour from recurring (*see* Semmens 1991, p. 3). In others the strategies are presented as a single unit. Alder (1991, p. 55) made the point that for some jurisdictions in Australia, "prevention is an issue [solely] for the juvenile justice system" while for others, "the total gamut of services available to young people are conceived as part of a delinquency prevention strategy".

The dominance of the one-level or two-level conceptualisation of preventive strategies accounts, perhaps, for the nature of the Australian crime prevention initiatives over the past five years. These focussed "predominantly on situational and policing strategies which attempt to limit opportunities for criminal activity and emphasise the role of the criminal justice system in deterrence" (Coventry et al. 1992, p. ii). As products of the "law and order" paradigm of the 1970s and 1980s, Coventry and his team indicated that these initiatives have concentrated on secondary and tertiary prevention strategies, to the neglect of the primary approach which seeks to deal with structural disadvantages in the society. The review of the school-based prevention programs in the rest of this paper will highlight whether such general

characterisation of justice intervention applies to the efforts in the educational context.

The School in the Life of Juveniles

Education during most of a person's formative years has increasingly become the responsibility of the school (Siegel & Senna 1981, p. 278). Indeed, there is an increasing perception that schools are the only instruments of social change and value transmission now surviving in this second half of the twentieth century or that might go into the next century intact. Family and religion—the great old institutions for basic socialisation—are now considered to be in tatters. Semmens' (1991, p. 2) observation regarding the family versus the school is apt: the role of the school "has become more and more critical with the progressive fragmentation of society, including the family unit . . .".

By and large then, schools are seen as the principal agency not only for socialisation but also for social correction (Griffin & Griffin 1978, p. 256). Many commentators, drawing on H. G. Wells dictum that "human history becomes more and more a race between education and catastrophe", see the school as the saviour of society (quoted in Jones 1975, p. 88). Such perception finds profound expression in the expectation placed on schools to contribute to crime prevention. "Schools are in a unique position to identify maladjustment early in the lives of children and to differentiate between growing pains and the beginnings of a deep-seated emotional disturbance", says Robert Taber, the then head of the Department of Public Personnel and Counselling in the Philadelphia school system (quoted in Tunley 1962, p. 129). Tunley endorsed this view when he said "our schools are potentially one of our best weapons in the fight against delinquency" (1960, p. 130). Braithwaite (1975, p. 110) captured the same perception when he said: "if the school is the mouse race that prepares us for the rat race, then a solution to the social pathology of the rat race may lie within the school".

Yet there is no argument about schools also being a source of delinquency or violence. Negley Teeters, the fire-eating criminologist of Temple University, said "if you ask me, the crux of our delinquency is not the parents; it's the schools" (quoted in Tunley 1962, p. 119). The preventive role of schools assumes a greater significance in the light of the proportion of the population which comes under schools' protracted influence.

In 1990, 10,007 schools (government and non-government) were in operation in Australia. There were 3,041,657 full-time students attending these schools, with 212,908 full-time and part-time teaching staff (ABS 1990, p. 1). Students and staff constituted about 19.1 per cent of the total resident population in Australia in that year. More interestingly, the full-time student population accounted for 59.1 per cent of the total resident youth population (that is up to nineteen years). In 1991 there were 9,980 schools and the student population was 3,075,137 (ABS 1991, p. 1), accounting for about 59.8 per cent of the total resident youth population. In the school age population category (that is six to eighteen-year-olds), the proportion of full-time students has ranged from 89 per cent to 92 per cent since 1987.

A Federal Government study of the United States school system in 1977 found that students spent at least 25 per cent of their active (day) time in school (National Institute of Education 1977). "Fifteen Thousand Hours", a British study by Rutter et al., makes the point that:

> For almost a dozen years during a formative period of their development children spend almost as much of their waking life at school as at home. Altogether this works out at some *15,000 hours* (from the age of five until school leaving) during which schools and teachers may have an impact on the development of the children in their care (Rutter et al. quoted in New South Wales Department of School Education 1992).

An average Australian Capital Territory student has "a normal 11,500 hours of education" to complete (ACT Legislative Assembly Standing Committee on Social Policy 1991, p. 133). Because of this extensive and protracted contact with juveniles, schools are seen to be strategically placed for early identification of and intervention in juvenile crime proneness. Most of the predictors of delinquency or criminality are evident in the school context: truancy, rule-breaking, non-compliance, poor academic performance, aggressiveness and so on (for a method of detecting propensity for delinquency, see Stott 1982, p. 153; Hawkins & Lishner 1987, p. 185). Sullivan and Bash (1967, p. 58) noted that "the strategic position that the school occupies in the life of children . . . does not . . . automatically make the school a strategic context for prevention". They went on to say that "the school setting is an opportune position to reduce the status discontent that many sociologists consider a critical determinant in much urban delinquency". How do schools play this role?

School-based Prevention Programs

School-based programs for the prevention of juvenile crime are oriented towards students, teachers, curricula, administration, the physical design of the school, parents, security personnel, community and legislation (New South Wales Department of School Education 1992). The United States experiments in this area appear exemplary and have included early educational enrichment programs (for example the Perry Preschool Project), elementary school programs (for example the Woodlawn Project), behaviour control and management (for example the PREP Project), enhancing the curriculum (for example, Law-Related Project), alternative education strategies (for example PATHE Project), and changes in mainstream school arrangement and classroom practices (for example School-Team Approach).

Hawkins and Lishner (1987, pp. 194-211) noted that, essentially, the programs sought to prevent, rather than merely remediate, delinquent behaviour of juveniles, with the exception of the Perry Preschool Project which focused on early childhood. On evaluation, mostly through experimental research design, the programs were found to have produced positive effects, including improvement of social adaptation, improvement of academic skills, reduction in infraction of school rules or violence, reduction in classroom disruption, and greater attachment to school. Hawkins and

Lishner concluded that "on the basis of this evidence, education-focused strategies to prevent juvenile crime appear to be warranted".

The findings on the early childhood education program is particularly interesting. The Perry Preschool Project which began in Michigan in 1962 was premised on the thesis that education for the high-risk population of this age holds promise for preventing delinquency. It provided one to two years preschool education and weekly teacher home visits to a group of 123 disadvantaged youths. The project goal was to enhance the intellectual and social development of these youths, and to increase positive adjustment and success in elementary and higher educational attainment with a view to reducing the risk factors associated with teenage criminality. Witness the results:

> lasting benefits in cognitive performance, scholastic placement and achievement, decreased use of welfare assistance and incidence of teenage pregnancy, increased high school graduation rates and enrolment in postsecondary schools and employment, and reductions in official delinquency rates (Hawkins & Lishner 1987, p. 194).

Potas et al. (1990, pp. 55-60), after reviewing some commentaries on this project and other preschool based prevention strategies, concluded that "preschool education is one of the most hopeful areas for new programs". They argued that this education was superior to the "school level education", saying that the latter intervenes "necessarily at a later stage of the child's cognitive, behavioural and social development", and concentrates on students already "flagged" as being delinquency-prone with all the attendant labelling problems. They nonetheless acknowledged the advantages of school level strategies. As will be seen in the following review, the Australian approach consists mainly of strategies for children of school age.

The Australian Experience

School-based programs in Australia fall into two broad categories. One category comprises in-school programs which are the sole efforts of the school, seeking to address the problem of juvenile delinquency or crime through adjustment to the internal structures and processes, particularly in the areas of organisation, curriculum and pedagogy. The programs in the second category require and are conducted in partnership with outside agencies such as family, community and the police. These programs are out-of-school, but not necessarily off-site. The main distinguishing factor is the involvement of outsiders. Only the in-school programs are reviewed in some detail here. Usually, these programs are designed in response to behaviours of students which have been labelled as school crime. Thus, before the review, it is pertinent to reflect on this class of juvenile criminality.

Types of school-related offences

Petrie (1984, p. 3) wondered if the class of school-related offences is "school crime or school age crime"? A survey of the various forms of anti-social

behaviour or acts forbidden by public law which are perpetrated by students in contemporary times justifies this confusion. Beside the status offences such as truancy, lying, non-compliance, as well as fighting, for which school juveniles have been known, index offences seem to be commonplace. Garrett et al. (quoted in Petrie 1984, p. 3) underscore this point:

> Within the last ten years we have witnessed an entirely new and largely unexpected phenomenon: serious crime in schools. Once considered neutral (sometimes sacred) turf, schools are now experiencing a rash of murders, rapes, robberies and acts of wanton destruction, directed at everyone within and around the school setting.

A recent study comprises a survey of media reporting of crimes in schools in Australia and a pilot analysis of suspension reports from Australian Capital Territory public schools. The study suggests that the crimes against which school-based programs should be mounted in Australia have become more complex than the traditional status offences. Students inflict gun wounds on themselves in front of classmates, vandalise school property, stab fellow students, engage in brawls in and outside school grounds, punch teachers, verbally abuse and sexually harass members of the school community, and engage in drug-related behaviours (Omaji 1992). Most of this sounds like a re-run of what some studies identified as "school crime" in America in the 1970s (*see* Gottfredson 1975; McPartland & McDill 1977; National Institute of Education 1977; Gottfredson & Gottfredson 1985).

In response to these "behaviour problems" in Australian schools, there has been a number of programs put in place. Some of these programs which have had a preventive orientation are outlined below.

School counselling and discipline programs

Most of the counselling and discipline facilities in Australian schools have both preventive and treatment foci. In South Australia, the "Stop, Think, Do" program developed by Lindy Peterson and Ann Gannoni for use in schools and homes is based on behavioural and cognitive-problem solving methods. It is incorporated in the state's Primary School Counselling Project to equip students, teachers and parents with non-violent conflict resolution strategies. The school counsellors work with individuals, small groups and classes, assisting students, teachers and parents to enhance their skills in responsible behaviour management.

The Tasmanian Supportive School Environments Program, arising from a policy enunciated in 1988, is a counselling strategy but is predominantly teacher-oriented. Its goal is to provide teachers with conflict resolution skills. It "set out to open up "cellular" schools and promote open sharing of problems and solutions among teachers" (Hocking & Murphy 1992, p. 134).

By design and implementation, these programs aim, generally, to promote the early identification and appropriate management of behaviourally disturbed children. Counselling for potentially deviant students appears now firmly entrenched in all jurisdictions in Australia. As Slee and Knight (1992, p. 7) have observed, "the concern is not only for ways

of dealing with disruption, but is also for prevention"; hence the "pastoral" orientation of most of the programs in this area. Its effectiveness in preventing student criminality remains to be tested.

In the British context, Graham (1988, p. 36) has shown that "much of the literature on counselling is descriptive . . ., but with little evaluative data on how counselling may be effective in preventing or reducing disruptive behaviour". Best et al.'s 1983 ethnographic study (cited in Graham 1988, p. 35) of one school in Britain found that "pastoral care" amounted to little more than a structure for accomplishing disciplinary and administrative duties. Also, in one US experience, the experiment with the high school girls in New York "found no significant effect for the counselling intervention" (Hawkins & Lishner 1987, p. 192).

Curriculum development and teaching

The link between curriculum—including subject materials and the structures within which teaching and learning take place—and occurrence of school crime is generally acknowledged in Australia. For instance, the Working Party on the Abolition of Corporal Punishment in Victoria reported in 1983 that "self-discipline is intrinsically interwoven with the school curriculum and the strategies selected by the community for the development of self-discipline should be undertaken within the curriculum framework . . ." (quoted in Slee 1992, p. 17). This is essentially putting the matter in positive terms. But the resultant programs in all the jurisdictions to make curriculum more appropriate to the needs of students have varied considerably. The main areas which appear particularly significant for the jurisdictions" curriculum-based crime prevention efforts include: early childhood education, minority cultures, gender equity, and knowledge of the law.

The development of curricula to address early childhood education has largely been in terms of improving teacher training. In Queensland, for instance, early childhood programs are offered in a range of tertiary institutions as part of teacher education. The emphasis is on training teachers to be able to develop "social competence in young children and close relationships between the environment of the child care service, kindergarten and preschool and the child's home environment" (Violence Monitoring Unit 1991, p. 72). The New South Wales Interdepartmental Task Force—Early Childhood also considered the development of training programs to improve early childhood education in the preschool years (*see* Violence Monitoring Unit 1991, pp. 72-3).

For children of school age there are a few curriculum- and teaching-related programs that seek to prevent anti-social behaviour. The Queensland Special Needs Support Groups offer tutorial assistance to students, support for parents and in-service training for teachers to cope with the needs of at-risk groups (Tansky 1991, p. 18). There is also the Human Relationships Education program taught in all Queensland State schools. The program is seen as "a tool for encouraging non-violent values" among members of the school community (National Committee on Violence (NCV) 1990, p. 145).

Minority cultures present a juvenile crime problem in Australia, as in the United States, and the services of schools have been enlisted in preventing this problem. It has been recognised that marginalisation and loss of traditional cultures, leading, inter alia, to low personal worth and despair, is one major factor associated with this problem, a factor which stands out most visibly in the experiences of the Australian Aboriginal people.

All the jurisdictions now have Aboriginal studies as part of their school curricula in one form or another. The NCV recommended that ". . . steps should be taken to restore the pride of all Australians in the extraordinary richness of Aboriginal social and cultural traditions" (NCV 1990, p. 166). Details of the implementation of this recommendation and its effect on school curricula have been documented by the Violence Monitoring Unit (now known as the Crime and Violence Prevention Unit) (1991, pp. 98-101).

Gender equity in curriculum as a strategy arose from the recognition that imbalances in the power relations between boys and girls and the stereotypes flowing from them have not only disadvantaged girls academically, but also underpinned sex-based criminal victimisation in schools and the community in such offences as sexual assault, sexual harassment, and domestic violence. Schools are expected to play a preventive role in this problem. The Gender Equity in Curriculum Reform Project, started in 1990, will devote $3 million over three years for "the development of curriculum which acts equally in the interests of girls and boys, and leads to equality for women and men in home, work and public life" (Violence Monitoring Unit 1991, p. 51).

The Curriculum and Gender Equity Policy Unit in DEET supports a Gender and Violence Project which, among other things, is intended to provide curriculum materials to schools with the message that sex-based violence, like violence in general, is unacceptable. Ashenden and Associates (1992) have reported that schools in Australia have, since the beginning of the project, been preoccupied with "efforts to reduce stereotyped curriculum participation" and with running girls' camps, establishing equal opportunity days for girls, instituting girls' clubs, and running special evening sessions.

Knowledge of the law has also featured among curriculum-related programs in some Australian schools for the prevention of juvenile crime. The assumption is that "a greater understanding and awareness of the law and its objectives by students should lead to greater responsibility and a lessening of the likelihood to commit crime" (Warren 1985, pp. 68-9). Victoria and South Australia offer legal studies in their secondary school curricula. The effectiveness of this strategy is probably as yet untested. However, an American experiment, under the title Law-Related Education, suggests that "knowledge of the law" has a preventive impact on juvenile crime. An evaluation of this program by the Social Science Education Consortium and Center for Action Research in 1981 found that the knowledge gained "correlated significantly with reduced infractions of school rules, property offences at school, violence against students, public disorder and drinking" (Hawkins & Lishner 1987, pp. 197-8).

Alternative education

Where the mainstream school processes fail to prevent juvenile crime some schools consider specialised alternatives which are tailored to the needs of the students experiencing failure or acute behaviour problems. These alternatives involve changing instructional approaches and the school organisation to encourage positive relationships between the at-risk students and schooling. The school programs may be "on-site" or "off-site". They can also be teacher-oriented.

In the review of the American experience, Hawkins and Wall (1980) identified four elements of alternative education strategies which appear most promising for the prevention of students' problem behaviours:

(a) individualised instruction tailored to individual interests and abilities,

(b) reward systems contingent on effort and proficiency,

(c) goal-oriented work and learning emphasis in the classroom in an "open school" context, and

(d) conducive physical and human factors such as small school size or student-teacher classroom ratio, caring and competent teachers, and a strong and supportive administrator.

In Australia, the Tagari Project which operated from 1974 to 1977 in Wesley Church Hall, Hobart, is a good example. The project was an attempt to offer an alternative within the state secondary system of education, a system which was perceived as "failing, in several ways, to serve the needs of a number of its students, and thus the community" (Bladel 1985, p. 17). In more recent times, most of the activities in this area are part of behaviour management/modification programs.

In the ACT for instance, such a program consists of two withdrawal units in which schools request placement of students "when they are at a point of crisis having tried all in-school options" (ACT Legislative Assembly Standing Committee on Social Policy 1991, p. 39). The Northern Territory Behaviour Management Services Team administers an Effective Teaching Program in many of the state schools. As Hooper (1992, p. 171) described the program, "when a student is referred . . ., the team analyses the type of unacceptable behaviour and its purpose, . . . and develops a program to be implemented in conjunction with the student and the classroom teacher . . . within a set time limit". Apparently, this program is designed to supplement the mainstream school efforts to deal with the precursors or actual manifestation of student criminality.

An illustration of teacher-oriented alternative education is the South Australian Affective Education Project which operated in 1977 and 1978. Volunteer teachers undertook a specialised teacher education program to assist them develop helpful attitudes to students who are disruptive. A major aim of the project was to "[formalise] school based initiatives to counter

delinquency" and, in the end, the project was judged to be a success (*see* Marnier 1980, p. 3).

Concluding Remarks

The preventive programs of schools such as the ones highlighted in the foregoing discussion carry significant implications for the juvenile justice system in Australia, as indeed they do in other industrialised nations. The factors which make the position of schools so strategic suggest that success in curbing students' "behaviour" problems would drastically minimise the workload of the police, the courts and the corrective services, at least to the extent that this workload relates to juvenile offending. In brief, schools are central to the lives of young people. Some of their practices "contribute unintentionally but systematically to troublesome behaviour both in and out of school", and as sites and victims, schools must relate to juvenile crime as a practical problem (US Department of Justice 1981, Chapter 2). If the view that early childhood experiences of disorientation and norm violation can progress into adult criminality is true, then, to reduce the juvenile crime problem through the school holds a lot of promise for the entire criminal justice system. The emerging interest of academics and professionals in schools, emphasising prevention rather than control in juvenile justice, may not be misplaced.

However, a discourse on the role of schools should also address the issue of the level at which schools make the expected contribution to prevention. For instance, with the exception of the issues in curriculum development such as early childhood education, minority cultures, and gender equity which come close to dealing with social or structural disadvantages, the Australian school-based interventions occur mainly at the secondary level of prevention.

Counselling programs generally take a *post factum* view of welfare and discipline, focusing on those who are already at risk. Although an exception has been made earlier for the early childhood education programs, most do not emphasise the "enrichment" component (only the Northern Territory Early Childhood and Early Intervention Program claims to be involved in preschool enrichment systems and planning, *see* Violence Monitoring Unit 1991, p. 74). Yet it was the enrichment element that underlay the success of the well-known US Perry Preschool Project in turning the systemic disabilities of the participants around. The alternative education model is also essentially remedial rather than preventive in the primary sense.

Since the 1990s, most of the school-based programs in Australia have been designed and implemented within the "whole school" paradigm, one which focuses predominantly on behaviour and not structural issues (*see* Johnson 1992, p. 82). Perhaps this is a reflection of the dominant argument in the debate over what changes are necessary to modernise the schools. This argument, couched in terms of a shift from authoritarianism to democracy (*see* Balson 1987), does little more than attempt to define what constitutes effective behaviour management in schools.

In order to make a more profound contribution to the primary level of juvenile crime prevention, schools must, as well, aim to improve youth employability, address the structures that deny legitimate opportunities to youth and equip youth with a sense of commitment and responsibility for community life. The question is, are schools equipped to do this? With necessary support from the community, schools should be able to play this role reasonably well.

References

ACT Legislative Assembly Standing Committee on Social Policy 1991, *Inquiry into Behaviour Disturbance among Young People*, ACT Legislative Assembly, Canberra.

Alder, C. 1991, "Delinquency prevention in Australia: overview and comments on state position papers", in *Youth Crime Prevention, Proceedings of a Policy Forum*, ed. B. Halstead, Australian Institute of Criminology, Canberra, pp. 55-9.

Ashenden & Associates 1992, "Listening to girls", A Report of the Consultancy undertaken for the Review of the National Policy for the Education of Girls, Ashenden and Associates, Canberra.

Australian Bureau of Statistics 1990, *Schools in Australia*, Catalogue No. 4221.0.

---------- 1991, *Schools in Australia*, Catalogue No. 4221.0.

Balson, M. 1987, "Understanding and preventing behavioural problems in school", in *Crime at School*, ed. D. Challinger, Australian Institute of Criminology, Canberra. pp. 13-24.

Bladel, F. 1985, "Tagari project: an alternative school experience 1974-1977", *Australian Crime Prevention Council Journal*, June, vol. 7, no. 3, pp. 17-19.

Braithwaite, J. 1975, "Competitiveness in Schools and Delinquency", *Australian Journal of Social Issues*, vol. 10, no. 2, pp. 107-10.

Coventry, G. & O'Malley, P. 1992, "Evaluation of youth crime prevention: national application of an impact and process design", in *Australasian Evaluation Society International Conference Proceedings*, Australasian Evaluation Society, Melbourne, pp. 26.1-26.13.

Coventry, G., Muncie, J. & Walters, R. 1992, *Rethinking Social Policy for Young People and Crime Prevention*, National Centre for Socio-Legal Studies, Discussion Paper Series, no. 1, La Trobe University, Melbourne.

Gottfredson, D. 1975, "Organising crime: a classificatory scheme based on offense transitions, *Journal of Criminal Justice*, vol. 3, pp. 321-32.

Gottfredson, G. D. & Gottfredson, D. C. 1985, *Victimization in Schools*, Plenum Press, New York.

Graham, J. 1988, *Schools, Disruptive Behaviour and Delinquency: A Review of Research*, Research Study 96, Home Office, London.

Griffin, B. & Griffin, C. 1978, *Juvenile Delinquency in Perspective*, Harper and Row Publishers, New York.

Hawkins J. & Lishner, D. 1987, "Schooling and delinquency", in *Handbook on Crime and Delinquency Prevention*, ed. E. Johnson, Greenwood Press, New York, pp. 179-221.

Hawkins, J. D. & Wall, J. S. 1980, *Alternative Education: Exploring the Delinquency Prevention Potential*, Reports of the National Juvenile Justice Assessment Centers, Washington DC.

Hocking, H. & Murphy, L. 1992, "Developing an Integrated Discipline Policy in Tasmania", in *Discipline in Australian Public Education: Changing Policy and Practice*, ed. R. Slee, Australian Council for Educational Research Ltd, Hawthorn, Victoria, pp. 145-62.

Hooper, S. 1992, "Discipline in a Northern Territory High School", in *Discipline in Australian Public Education: Changing Policy and Practice*, ed. R. Slee, Australian Council for Educational Research Ltd, Hawthorn, Victoria, pp. 163-76.

Johnson, W. 1992, "South Australia: from good school practices to effective policy", in *Discipline in Australian Public Education: Changing Policy and Practice*, ed. R. Slee, Australian Council for Educational Research Ltd, Hawthorn, Victoria, pp. 79-104.

Jones, A. W. 1975, "The role of the school in strategies for social change", in *Kids and Crime*, Australian Crime Prevention Council Conference Proceedings, Australian Crime Prevention Council, Adelaide, pp. 86-93.

Lejins, P.P. 1967, "The Field of Prevention", in *Delinquency Prevention: Theory and Practice*, eds W.E. Amos & C.F. Wellford, Prentice-Hall Inc, New Jersey, pp. 1-21.

Marnier, L. 1980, *The Affective Education Project: A Preventative Program to Reduce Delinquency through School-based Teacher Education*, Department of Education, Adelaide.

McPartland, J. & McDill, E. 1977, *Violence in Schools*, Lexington Books, Toronto.

National Committee on Violence 1990, *Violence: Directions for Australia*, Australian Institute of Criminology, Canberra.

National Institute of Education 1977, *Violent Schools—Safe Schools: The Safe Schools Study Report to the Congress*, US Government Printing Office, Washington DC.

New South Wales Department of School Education 1992, "Managing aggressive and disruptive behaviour: part 1", *Resources for Teaching Against Violence*, New South Wales Department of School Education, Sydney.

Omaji, P. 1992, "Violence in Australian schools", Working Paper, Violence Prevention Unit, Australian Institute of Criminology, Canberra.

Petrie, S. 1984, "Delinquency and School", PhD Thesis, submitted to the University of Queensland.

Potas, I., Vining, A. & Wilson, P. 1990, *Young People and Crime: Costs and Prevention*, Australian Institute of Criminology, Canberra.

Semmens, R. 1991, "Delinquency prevention: individual control or social development", in *Preventing Juvenile Crime*, eds J. Vernon & S. McKillop, Conference Proceedings No. 9, Australian Institute of Criminology, Canberra.

Siegel, L.J. & Senna, J.J. 1981, *Juvenile Delinquency: Theory, Practice and Law*, West Publishing Co., Minnesota.

Slee, R. 1992, "Reforms and ravines: diminishing risks in schools through systematic change", in *Discipline in Australian Public Education: Changing Policy and Practice*, ed. R. Slee, Australian Council for Educational Research Ltd, Hawthorn, Victoria, pp. 177-97.

Slee, R. & Knight, T. 1992, "Recent changes in discipline policies and implications for the future", in *Discipline in Australian Public Education: Changing Policy and Practice*, ed. R. Slee, Australian Council for Educational Research Ltd, Hawthorn, Victoria, pp. 1-12.

Stott, D. 1982, *Delinquency: The Problem and its Prevention*, Spectrum Publications Inc., New York.

Sullivan, C. & Bash, S. 1967, "Current programs for delinquency prevention", in *Delinquency Prevention: Theory and Practice*, eds W.E. Amos & C.F. Wellford, Prentice-Hall Inc., New Jersey, pp. 51-72.

Tansky, M. 1991, "Queensland position paper: crime prevention programs", in *Youth Crime Prevention, Proceedings of a Policy Forum*, ed. B. Halstead, Australian Institute of Criminology, Canberra, pp. 15-26.

Tunley, R. 1962, *Kids, Crime and Chaos: A World Report on Juvenile Delinquency*, Harper and Row Publishers, New York.

US Department of Justice 1981, *Delinquency Prevention: Selective Organisational Change in the School*, Prepared by Judith Little, Center for Action Research Inc., Washington DC.

Violence Monitoring Unit 1991 (unpub), Violence, Australian Institute of Criminology, Canberra.

Walgrave, L. 1982, "The role of schools in a changing society", European Community on Crime Problems (1982), *Prevention of Juvenile Delinquency: The Role of Institutions of socialisation in a Changing Society*, Strasbourg. pp. 43-83.

Warren, E.D. 1985, "School crime prevention programmes", *Justice Administration Essays*, no. 1, pp. 63-73.

Wilson, P. 1991, "Opening address: Youth crime prevention—towards creative strategies", in *Youth Crime Prevention, Proceedings of a Policy Forum*, ed. B. Halstead, Australian Institute of Criminology, Canberra, pp. ix-xii.

YOUTH IN ACTION: EMPOWERING YOUNG PEOPLE FOR COMMUNITY CHANGE

John Engel and Julia Young

Synopsis

THE FOCUS OF THE YOUTH AND THE LAW PROJECT (YALP) AT Campbelltown, New South Wales is crime prevention—a social approach of working proactively with young people to increase their self-esteem, reduce anti-social behaviour and help them carry out community improvement projects.

Over its seven years of operation, YALP has evolved methodologies which can empower young people of all backgrounds to initiate change in their community, and in that process, acquire skills which increase self-esteem and equip them for an active and positive contribution to the community. YALP's fundamental message, from experience, is that young people do have good ideas, and given the chance and some support, they are able to plan and implement their own projects for change.

As Australia begins the 1990s in serious economic recession, communities everywhere face a growing pool of underemployed/unemployable young people, and look for crime prevention strategies to counter the risk of youth alienation, marginalisation and communal violence.

The objective of Youth Action is to establish a wide-based community movement which encourages the positive involvement of young people in solving issues which affect them—treating young people as resources, not as problems. Youth Action will be supported by a YALP resource group offering community leaders, youth workers and young people experiential training in YALP methods of empowerment.

This paper describes YALP's approach to crime prevention; the history and methodology of the Project from 1985 to 1992; summarises the lessons learned; and proposes a wider application of the methodology as a youth-participation crime prevention strategy which could be implemented in many communities interested in addressing youth alienation.

Youth and the Law Project's Approach to Crime Prevention

The Project's approach to crime prevention is to use social strategies. As a social strategy in crime prevention, YALP's methodology for involving young people starts with the assumption that young people can take responsible decisions and actions, given the opportunity and climate to learn the necessary skills. Further, the motivation to learn and acquire useful living skills can be stimulated by encouraging self-direction and responsibility for control of the action projects which are generated.

YALP's approach is supported by comments made in a recent paper, "Rethinking social policy for young people and crime prevention" (Coventry et al. 1992, p. ii). The paper says, in part:

> Emerging from the political rhetoric is the term "crime prevention" which is clearly problematic. It further accentuates inadequate notions of crime and reinforces the view that it is the justice system that must take primary responsibility for all troubling and troublesome behaviour. It further attributes a negative label to these young people subject to interventionist policies, and subsequently fails to focus on the positive and constructive potential of Australia's youth.
>
> The term "social development" is open to a wider variety of interventionist strategies and should encourage greater participation from all sections of the community in recognising and addressing the problem of youth neglect, alienation, marginalisation and structural disadvantage. Structural disadvantage is a product of unemployment, poverty, racism, sexual inequality and marginalisation through limited access to social resources . . .
>
> Collective community ownership of social development/youth integration policies is vital to the effectiveness of any initiative.

YALP's philosophy stands in direct contrast to that of many youth-serving agencies, where adults (including youth workers) have traditionally seen their role as discovering what the young people's problem are (albeit by consultation) and then (as adults) determining solutions or providing services, on the young people's behalf. YALP's central idea that young people can be given control of the project—that the process starts "where the young people are at" and remains young people centred at all times—can itself be both difficult to understand and quite threatening to the adult-ordered organisational culture of youth-serving agencies.

Overview of YALP

History and methodology

The Youth and the Law Project is a proactive crime prevention project based in the Macarthur region (35 km south west of Sydney). Its unique approach is to work with young people (aged 14-24 years) in the region to design and implement their own programs for change.

YALP is funded by the Law Foundation of NSW, which initiated the project in 1985. In 1984, the Foundation had commissioned Professor Duncan Chappell to study the high rate of youth crime in the area. His report, *Growing up in the Macarthur Region*, recommended a project which addressed youth crime by actively involving young people in solving the problems which affected them. Youth Forum, an innovative youth organisation which had extensive experience in conducting forums with action-outcomes for young people in NSW, was employed to manage the project.

YALP's objectives are to reduce crime and enable local young people to have a positive influence on their community through:

- giving them opportunities to identify and discuss issues which concern them;
- encouraging a positive and active approach to solving their problems and creating change; and
- resourcing them with skills and facilities to support their action.

YALP's philosophy of working with young people is based on facilitating action, not directing it. Young people control the projects and activities in which they are involved. Young people are the decision-makers, the workers and action-researchers in YALP project groups. The Project Officer acts as facilitator and support adult to the group.

In all its activities, YALP puts high priority on both the personal development and the skills acquisition of young people. YALP's strategy is to:

- firstly, engage interest in taking up issues which are important to young people—usually by holding a workshop or similar event to attract participants and distil issues;
- secondly, form project groups of young people interested in solving a particular problem they have identified, where experiential learning builds self-esteem and confidence in applying new skills.

Project groups meet regularly to work on realistic, achievable projects. They are supported by an adult adviser who acts as facilitator and resource decision-maker. The content of the decision-making and the direction taken by the group is strictly the responsibility of the young people. Project group numbers frequently increase over the term of the project, as members encourage friends to join in, but a typical group size is six to ten members and a project's life is typically six to twelve months. The support adult introduces appropriate skill development activities as the needs arise (for example telephone and interviewing skills before approaching the Mayor's office for information). The support adult also plays a vital role in consolidating the learning experiences of the group, which are directly related to the tangible objectives of the project.

The project group follows a seven-step problem solving process to achieve its goal:

- identify aims;
- collect information;
- consult other young people and adults;
- isolate key concerns;
- develop a strategy;
- implement strategy;
- evaluate and debrief.

Since its commencement in 1985, YALP has stimulated over forty project groups in Macarthur and other regions of NSW, through its own project and through joint projects with youth serving organisations such as the Sydney City Mission and the Police Citizen Youth Clubs. Amongst other things, these project groups have:

- produced books and kits for young people to use relating to the law and legal process; child abuse; health and drug abuse;
- organised two large multicultural festivals which embraced games, stalls, cultural performances—and a supportive local community;
- improved relationships between police and young people through community public relations and a "Say G'day to a Cop" campaign;
- established suitable venues for young people's entertainment such as: skate-boarding facilities; an after-hours under-18 night club; and one-off events such as dance-parties and band concerts.

Some projects have been great successes, bringing large numbers of young people and adults together to celebrate their community, attracting publicity and media interest. Other projects have been less remarkable, but achieved their objectives nonetheless. Some have been outright failures. But all projects have provided experiential learning, and two consistent outcomes:

- The community and young people in particular, benefit directly from the projects which are developed as solutions to real problems; and
- The participating young people acquire personal skills and self-confidence, through their experiences as members of the project group, which open up further opportunities in all spheres of their life, equipping them for a positive contribution to the community.

Applications

The Forum years 1985-89

For the first four to five years in Campbelltown, YALP ran annual Community Youth Forums involving 120 or so young people from the sixteen high schools (public and private) in the region plus members of youth groups (drop-in-centres). The forum was residential over three days, which gave adequate time for the ideas discussed and the processes of the forum to be absorbed by participants who may have come with little prior commitment. Participants' reaction sheets and the observations of teachers and youth workers bore testimony to the powerful "awakening and motivation" achieved in the course of a few days (in many cases—the antithesis of at-school behaviour). The forum event provided a "special something" shared across the normal divisions of school, suburb and their socioeconomic associations, a "glue" which often held through the life of a project group.

YALP was not very successful in attracting participants from the out-of-school ranks, largely because these young people were less able to commit themselves to a three-day program in advance. Nonetheless, some such groups which did attend, from a Community Youth Support Scheme (CYSS) and from Odyssey House (drug rehabilitation), were able to join in and valued the experience of the forum, clearly demonstrating the applicability of the process.

The forum model required young group leaders to run the Forum with about twelve group leaders for 120 participants. These group leaders were elected from the participants at one Forum and trained in group-leader skills by YALP staff and a voluntary adult advisory group, over six months of the following year.

This group leader training gave some participants extra skills and confidence, which led to further training opportunities and more skills. Ex-group leaders have become project officers with YALP. Another result of the group leader training was the complex role-model provided for young participants who could see their peers doing interesting things and were motivated to emulate them or at least "to have a go".

The Community Youth Forums produced a variety of project groups (6+ each forum) which by the end of the forum were highly motivated and able to start as a group which had already "come together". YALP as a new organisation in the local youth field was still viewed with some suspicion and not well integrated.

During this period, a number of successful one-day workshops were held between forums to address specific current issues such as vandalism, drugs and issues for students of non-English speaking background (NESB). These led to the formation of additional project groups.

The Evaluation and YALP Access—1990-92

In November 1989, the Law Foundation commissioned a comprehensive and independent evaluation of YALP which positively reinforced the value of its process and recommended that the YALP methods be disseminated to other youth organisations. The adoption of the one-day workshop model was also

recommended as the starting point, rather than the Forum, because of the relative cost effectiveness of one-day workshops.

Taking up recommendations of the evaluation, YALP undertook a three-year dissemination strategy under the title of "YALP Access" which had three main thrusts.

- To carry out joint projects with large youth-serving organisations where YALP was in a "consulting role" and the joint project partner contributed to YALP costs. The YMCA, Sydney City Mission (SCM) and Police Citizen Youth Clubs (PCYC) were approached and resulted in a small local joint project run with the Campbelltown SCM; and a pilot program in three PCYCs.

  While the YALP methods were clearly applicable to the PCYCs and worked well with (at risk) patrons of two inner city clubs, the organisation values and structures were threatened by the idea of yielding project control to the young people. The SCM project was also successful at the local level and met a challenge that YALP methods might not apply to young people out of the school system and not yet in employment. The trial project, however, was not designed to be taken up through the organisation as a whole.

  As a dissemination strategy, joint projects did not work, mainly because the established agencies and their youth workers were reluctant to accept fully the YALP philosophy of young people having control of projects of their own making. This experience was reinforced by joint working relationships with youth workers in other fields.

- To promote and publicise YALP, particularly at the local level—to make it more widely known and accepted in the community. YALP produced a glossy brochure; gave talks at Rotary, Lions and Apex Clubs and so on; took more opportunities to join local and state-wide youth worker networks; gave presentations at conferences; and generally became more aware of promotion opportunities. The Law Foundation produced a documentary video on the Project as part of a series publicising Foundation initiatives.

- Having to explain YALP in so many different settings consolidated YALP's own understanding of its processes and improved the application of its methods. In conjunction with the PCYC pilot program, draft instruction manuals were developed for training workers. These have been substantially improved to form the basis of the recently published *YALP Book* (1992).

  This strategy was eminently successful and has led to far more enquiries of YALP and requests to work with other local services. Together with the development of local projects (the third strategy element), YALP has become recognised and accepted amongst the local youth networks as

having special skills to offer, particularly in regard to young people's participation.

- To develop locally based projects so as to widen local impact and serve a more representative sample of youth needs, using workshop days rather than Community Youth Forums as the stimulus. A number of YALP initiated workshops were held with local projects groups emerging, but, in addition, YALP received requests to design programs for other groups: for example young offenders under the supervision of the NSW Government Young Offenders Support Team (YOST), Odyssey House drug rehabilitation clients, Marrickville youth workers with a mixed clientele. Another major local project was undertaken with funding from a National Youth Initiatives Grant for Juvenile Crime Prevention by the Commonwealth Department of Employment, Education and Training. YALP worked with young people of non-English speaking background (NESB) in a project called "Listen without prejudice", the outcomes of which were documented in a book published at the conclusion of the project (*The YALP Book*, August 1992). Being a Campbelltown-based project, it has further established YALP's presence in the field and opened up recognition among migrant communities.

The result of these three YALP Access strategies has been to strengthen YALP operating practices, with a widening of experience in diverse settings and groups of young people variously positioned along spectrums such as "at-risk" and "not-at-risk" and "high-literacy" and "low-literacy". YALP workshop programs have retained the same core ingredients, but have been varied to suit the differing groups and starting points. YALP has further consolidated its understanding of its successful practice and is now recognised as offering something unique amongst current youth work models.

It is from this background that YALP proposes a wide-based youth participation crime prevention strategy which any and every community can take up, called "Youth Action".

YALP Learnings

From the YALP Access dissemination phase, YALP has consolidated the following lessons:

- YALP's process works for all kinds of young people and the fundamentals are empowering.

- Adults are disinclined to give young people real power and control over projects. Adults tend to want to fix the problem, rather than allow the young people the chance to try—and maybe even to fail—but certainly to learn.

- The level of commitment to the work of a project group seems to be influenced by the level of interest generated at the start-up event (be it

workshop, forum or other activity), and this in turn is limited by the feeling of group cohesion before or during that event.

- The design of the "workshop" event should be flexible and take account of a group's relative cohesion, literacy skills, background and particular interests.

- Young people, in terms of their involvement with YALP, tend to move through four stages, and processes need to be kept appropriate at all times:
  - *apathy*—feeling impotent to bring about change in an adult-dominated world;
  - *interest*—awareness of one's own views as being OK to share, and hearing others' views;
  - *ideas*—involvement in generating ideas for change; recognising the possibility of a solution;
  - *action*—commitment to a goal and a project group; the rewards from challenge and success, even if small at first.

- Starting points in the process will differ with the participants and their readiness for progression to the next stage. Residential workshops (Forums) give rich, concentrated time. Equivalent day workshops can be spread over calendar time.

- The adult-support role is difficult to fill. Adults must avoid the temptation to take over the decision-making of the young people, rather than taking up their cause.

- Handing over power to the group may be threatening to an adult and can be perceived as an invalidation of that person, especially where self-esteem is not strong.

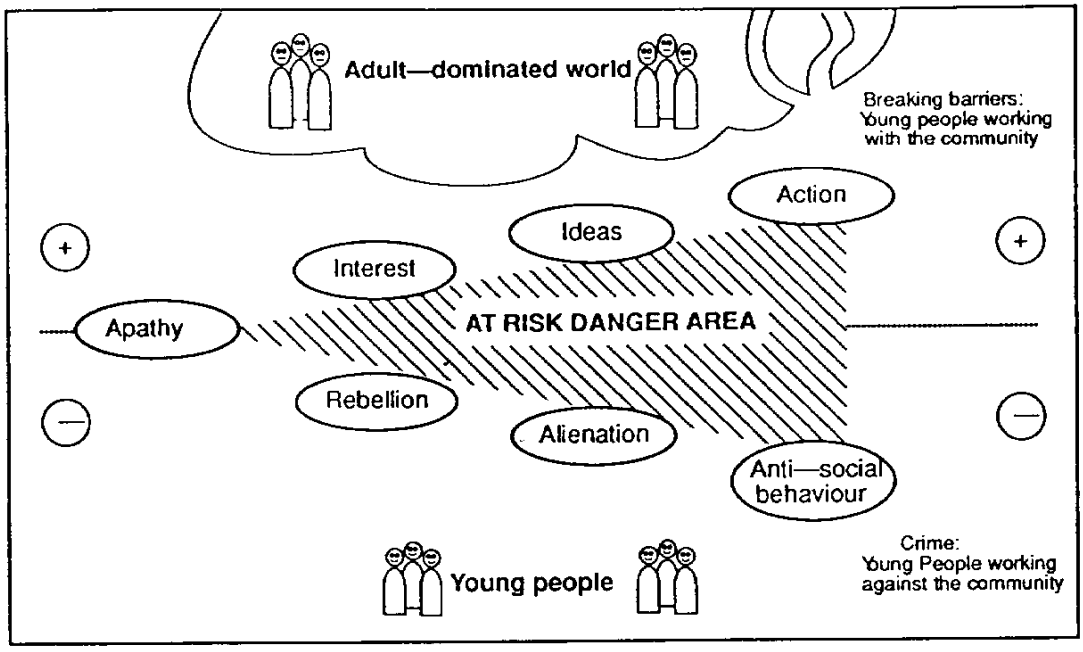
- The motivation and faith to pursue a young-person-centred approach must come from within the person's own experience, not be imposed.

- Experiential training is the most (possibly only) effective means of learning the support adult role and acquiring the skills.

- Time is an essential ingredient in the processes of change, both at a personal and an organisational level. Change must be allowed at the participant's own pace.

Figure 1

Youth Action¾ The Concept: wide-based youth-participation crime prevention strategy



YALP proposes that its experience and methods form the basis of a juvenile crime prevention strategy called Youth Action, in all communities.

Youth Action is a community-based active citizenship program which promotes learning through responsible action. Youth Action seeks to encourage young people to form small working groups in their local area (suburb, school, youth group, church or other group), to identify issues which concern them and to take positive action for improvement with the support of the adult community.

Youth Action will be a movement, rather than an organisation. It will provide a working model on which communities can establish their own action groups of young people wherever and whenever a need arises.

Youth Action has a fundamental belief in the capacity and motivation of all young people, from whatever background, to contribute positively to the community in which they live, given the opportunity, appropriate skills and support. It offers a complement and an alternative to the skills development practised in schools, and a special chance to those who do not "achieve" in the traditional education system, or who may have left school and face long-term unemployment and the risk of adopting patterns of anti-social behaviour. Youth Action draws on seven years of action research on crime prevention by YALP at

Campbelltown and more than twelve years working with young people through Youth Forum.

Youth Action's method is uniquely researched and designed in Australia. Through their experience of working together to solve mutually agreed needs, young people learn vital skills which they continue to use for community and personal benefit, for example problem solving; communications; planning; working in teams; speaking in public; relating effectively to adult decision-making processes. In so doing, young people develop the skills, self-esteem and confidence which make them valued to their community.

The Role of Youth Action

Youth Action will be supported by a YALP resource group which will promote its methods of working through the production of well researched, effective training materials and experiential-learning workshops, made available to all who wish to learn: teachers, youth workers, community workers, adults-in-support of action groups, and young people wanting to train as group leaders. Youth Action will use existing bodies and networks to promote youth-inspired community work.

The YALP resource group will have three main functions:

Training

- Experiential training for interested community members to learn the approach and set up their own action groups of young people.
- Training materials and in-the-field guidance to assist communities in the wider establishment of Youth Action groups, including a Youth Action resource book, videos and model programs as starting points for new groups, with hints on approaching the local community, businesses and Council for funding support of projects.
- Training of young people as group leaders to help the spread of action groups.

Publicity

- Publicising the development and growth of Youth Action programs and their achievements—newsletters written by young people about their projects and learning—and other promotional materials.
- Public relations campaigns to launch Youth Action statewide and targeting specific groups such as youth work training bodies (TAFE & UWS etc), schools, church youth groups, P & C groups, Councils.

Research

- Youth Action will continue action research into better ways of working with young people to achieve community change through locally organised workshops and larger regional forums, as appropriate. It will address the special needs of disadvantaged groups (such as young

offenders, NESB youth, long-term unemployed youth) and promulgate findings through the training medium.

Youth Action¾ Implementation Strategy

On the ground

Youth Action programs should require little structure beyond having:

- a group of young people with "a need to address";
- an adult person in support (facilitator) role;
- a place to meet;
- a link to Youth Action's YALP-based resource group for training and support as required.

It will be fundamental, however, that the resource group respond only to requests from communities which have expressed a clear "want" to take on the program; that is people who know they have a need!

A suitable starting point would be a "training forum" (workshop) to which interested community participants would be invited, for example, groups from up to six communities.

The training forum would provide both separate and joint skills development for young people and adults (equal numbers) who make up the community groups. The young people would be training as group leaders; the adults training as support-adults facilitating a project group of young people.

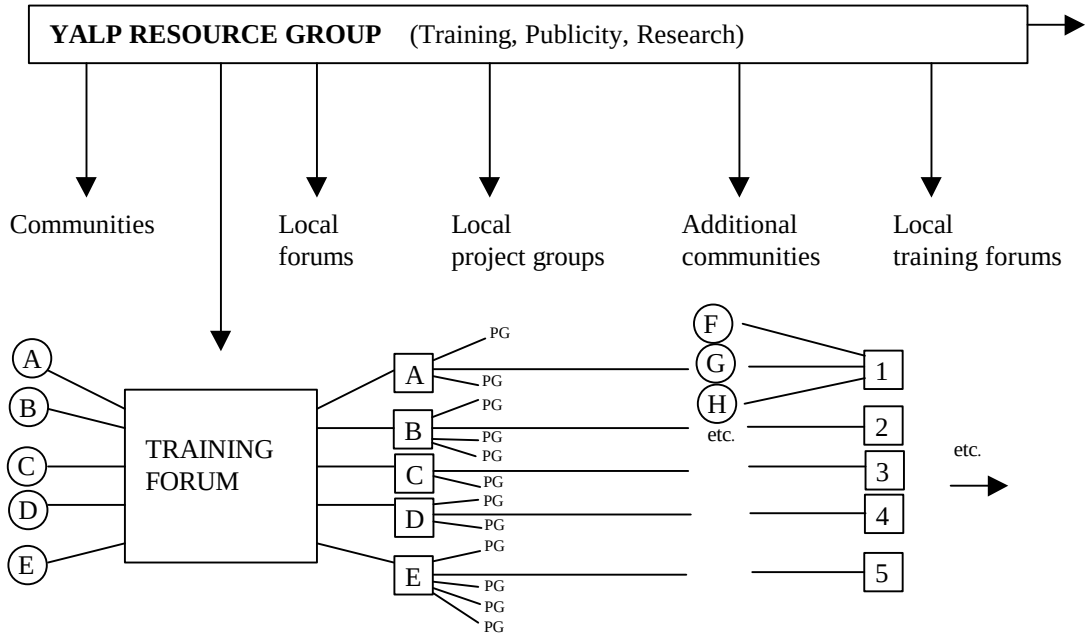
All participants would plan the start-up program for their own community, together. This would be supported as necessary by the YALP resource group. Within two to three months of the training forum, community groups would run their own start-up event (for example workshop) and two to four project groups would begin their work. The YALP resource group would continue its support, as needed, with a clear strategy of making the community group self-sufficient.

Once the community group felt sufficiently confident, six to twelve months after its program was established, it would initiate a training forum for other community groups in the region. This would disseminate the model more rapidly through the community and build support networks at the same time.

The training materials produced by the YALP resource group to support these activities would be developed to fit the National Youth Sector Training Curriculum currently being developed by the Australian Federation of Youth Sector Training Councils.

Figure 2

Getting Youth Action Underway



The next steps in putting Youth Action into practice are:

- To gain expressions of community support and interest, in NSW where YALP is based and also in other States;
- To develop an operating budget for approximately five years, and seek (with the Law Foundation of NSW) suitable partners to support the YALP resource group.

It is anticipated that local communities which adopt Youth Action will find their own funding sources. These demands are expected to be modest.

References

Chappell, D. 1984 *Growing up in the Macarthur Region: a Report*, Law Foundation of New South Wales, Sydney.

Coventry, G., Muncie J. & Walters, R. 1992, *Rethinking social policy for young people and crime prevention*, Discussion Paper No. 17, National Centre for Socio-Legal Studies, La Trobe University, Bundoora, Victoria.

VICTIM-OFFENDER MEDIATION PROGRAM (VOMP)

Evi Kadar

> Psychology has learnt that people must understand and fully appreciate their behaviour and its effect upon others before they can change it.
>
> No longer can the offender see the victim as a "faceless" member of society, and the victim cannot categorise the offender as one of "those criminals" (David 1986).

Background

Increasingly, there is acknowledgment that the formal criminal justice system, centred around the court process, has not been effective in the rehabilitation of juvenile offenders, and in fact has a stigmatising and negative effect on young offenders who become involved in it. Subsequently, there has been a move towards the establishment of informal procedures for dealing with young offenders (Wundersitz 1992).

There has also been a growing concern that victims of crime are neglected in the criminal justice process. In Victoria, there have been several developments over recent years aimed at improving the position of victims of crime within the criminal justice system. These include: the adoption of the Declaration of Victims' Rights; the increase in the Crimes Compensation Tribunal limit to $50,000; the establishment of a peak Victim Advisory Council, and the implementation of a pilot Victim Support Program through Court Network. Also, the Victoria Police has introduced Victim Liaison Officers within each police district. Despite these positive moves, criminal justice agencies have been slow to accept that victims have a central role to play within the justice system.

The development of programs such as the Victim-Offender Mediation program is based on a shift in the conceptual approach to the definition of crime, and a subsequent change in criminal justice policy which places emphasis not on punishment but on reparation, mediation and conciliation.

> Crime is no longer regarded as a conflict between two human beings, but as a conflict between offender and society (Fattah 1991).

The establishment of guilt and not undoing the harm done is at the heart of our criminal law. Once the criminal is punished, the debt (to society) is paid. However, punishment of the offender by the system acts to intensify the conflict rather than resolving it and widens the gap that separates the victim and the offender. It is argued that criminal matters are fundamentally a dispute between the individual and the state and that the interests and rights of the community are not appropriately negotiated between offender and victim. However, despite these views, there is increasing acknowledgment that the traditional criminal justice system which focuses on the offender and largely ignores the victim, needs to change.

The Victorian Legal and Constitutional Committee Report (1987) on support services for victims of crime supported the concept of mediated restitution programs which provide a role for the victim and an alternative approach to the treatment of the offender. These programs give the victim the opportunity to express feelings of fear and loss resulting from the offence, and offenders are required to face up to the injury caused to the victim and to make amends within a non-punitive setting.

Mediation/reconciliation programs are based on restorative rather than retributive justice. There are three fundamental principles on which these programs are based:

- Crime is a violation of one person by another.
- The victim's and offender's roles are recognised in both the problem and the solution.
- The crime can be resolved through restorative action.

Development of the Victim Offender Mediation Program in Victoria (VOMP)

Background

The Victorian program was developed as a consequence of a government commitment to trial a victim-centred mediation program but which also gives young offenders an active role in restoring the damage done by the offence. A review of victim-offender mediation/reconciliation programs, of which there are several operating in the USA, Europe and England, indicated that for the victim in particular, significant benefit can be derived from these programs. The Queensland, Wagga Wagga and New Zealand models were also examined, but it was considered that a program with the following distinct components should be trialed:

- Victim-centred. The victim's participation (voluntary) is essential to the program and the needs of the victim are of primary concern.

- Professional mediation. The use of highly trained mediators who have no vested interest in the victim, the offender or the outcome and are perceived by both parties to be neutral and non-judgmental.

- The young offender has a key role. The young offender is an active participant in the mediation session, with the family having a support role only.

The pilot program was developed at a central agency level in order to ensure that all legal and ethical issues were adequately addressed. Given the major shift in policy and procedures which was required for program implementation, this central direction was seen as essential.

Consultation process

In order to gauge the extent of support for the proposal to pilot a victim-offender mediation program in Victoria, a Program Statement was circulated to a number of key agencies for consultation, including the Legal Aid Commission, Community Services Victoria, the Children's Welfare Association, Attorney-General's Department and Victoria Police. Even though the majority of responses supported trialing a pilot program, a number of significant issues were identified as having to be addressed prior to implementation. A multi-agency Steering Committee was established and convened by the Ministry for Police and Emergency Services to address these issues and develop and monitor the pilot program. The Committee comprises representatives from Community Services, Court Network, Children's Welfare Association, Attorney-General's, Victoria Police, Office of Corrections, Legal Aid Commission, Law Reform Commission, Children's Court, Salvation Army and the two pilot Dispute Settlement Centres.

This integrated partnership approach to the development of the program has certainly had its benefits, albeit with some heartache from time to time. With such diverse interest groups there has not always been total agreement to the processes and procedures that need to be adopted. However, it has enabled the key legal, ethical and moral issues to be thoroughly addressed prior to implementation, and there is a commitment by all members to trial the program in order for some assessment to be made of its effectiveness.

The Steering Committee's primary consideration was to identify problems that had been experienced in the implementation of similar programs and ensure that they are not replicated. These considerations are outlined below:

- The need to develop clear aims and objectives that are not adapted mid course.

- The need for good independent evaluation based on program objectives and expected benefits.

- The pilot program should start small; that is, be restricted to minor offenders.

- The program should not interfere with other successful diversionary programs, such as the police cautioning program which appears effectively to be diverting first offenders from re-offending. Therefore, only those young people who would otherwise go to court would be referred to the mediation program.

- The program should focus on the mediation process rather than on a reparation outcome. Overseas research appears to indicate that the victim's satisfaction with the mediation process relates primarily to meeting the offender. One such study found that victims' satisfaction was in the mediation itself, despite the fact that when first asked what they expected to get out of mediation, they identified that it was the gaining of restitution for their losses (Umbreit 1989). The Steering Committee was also concerned that if the program focussed on restitution, there would be a much greater likelihood of widening the net of social control and of the program being inconsistent with the spirit of the Children's Court legislation. This issue is discussed in greater detail in a later section of the paper.

The Program

VOMP is being implemented on a 6-month pilot basis in two Dispute Settlement Centres—Frankston (outer metropolitan) and Geelong (a regional centre).

Program objectives

The objectives of the program are:

- to divert young people from the criminal justice system and from re-offending by fostering accountability and a sense of responsibility for the human and social consequences of their behaviour;

- to redress matters between the offender and the individual who has suffered the loss as a result of the offence, through a process of mediation which is perceived as fair to both the victim and the young offender;

- to provide an active role for victims of crime in the justice process which assists their recovery from the effects of the crime;

- to empower the victim and the offender by providing an opportunity for them to determine their own outcomes;

- to engage the community in crime prevention.

The Participants

The program targets young people between ten and seventeen years who have received at least one police caution and face the prospect of being charged. This applies to young people who have not appeared previously in

court and also those who have appeared previously at the Children's Court on not more than two separate matters. The criteria for selection of the young person into the program are: (assessment by police)

- the young person admits the offence;
- there is sufficient admissible evidence to establish the offence;
- the full circumstances of the offence must be known and any co-offender interviewed;
- there is an identifiable victim. (This can be an individual victim or a person representing an agency/organisation which has been offended against. In the latter case, the person should be able to express personal consequences of the offence);
- the young person understands and consents to participate in the mediation program;
- based on knowledge about the victim and offender, there is a potential point of conciliation that can be achieved through mediation.

The criteria for victim participation in the program are: (assessment by mediation centre intake worker)

- the victim understands the purpose, process and likely outcomes of mediation and the nature and implications of the alternatives to mediation;
- the victim consents to participation in the program and may be offered the option of face to face mediation with the offender or negotiated mediation through the mediator;
- victims who express a level of vindictiveness towards the offender which may result in verbal or physical abuse at the mediation session, or who appear extremely traumatised by the offence, should be offered referral to appropriate support services and not be considered suitable for face to face mediation.

Dispute Settlement Centres

There are seven Dispute Settlement Centres in Victoria aimed at helping people settle their disputes in a cooperative way. These may include neighbourhood disputes, work based disputes, parent/adolescent disputes, and so on. All parties are interviewed by experienced intake staff prior to the mediation session being arranged. Mediators are specially trained in conflict resolution and are employed on a sessional basis to work in pairs as neutral third parties to facilitate the resolution of disputes between individuals. They direct the mediation process not the outcome. Mediators are generally

matched with disputants in terms of age and cultural and socioeconomic background. Mediators involved in the pilot Victim-Offender Mediation program have undertaken special training for the program, including aspects of the criminal justice system, the needs of victims and offenders and issues in victim-offender mediation.

How does the program work?

At the time of apprehension of the young person by police he/she will be interviewed with parents/guardian by a senior sergeant and if considered suitable will be offered the option of mediation. If the young person is willing to participate, he/she will be referred to the Dispute Settlement Centre and interviewed by an intake worker. The victim will initially be contacted by police about the program and then approached by the intake worker and invited to participate in an intake interview.

The quality of work done in the intake phase with the victim and young person has a significant impact upon the actual mediation session and the outcome. Likely mediation outcomes will be canvassed by the intake worker to ensure that there are no unrealistic expectations in relation to the mediation session, particularly on the part of the victim.

Victims and offenders electing to participate in the program can bring a friend or family member to the mediation session if they wish. The role of the support person is to provide support, not to participate actively in the mediation session unless the mediator deems it appropriate.

If mediation is to proceed, the centre arranges a suitable time for the mediation session. It is important that the session be held within a short time of the referral being made to ensure a more immediate and meaningful resolution.

At the mediation session, which is conducted in an informal setting, the two mediators explain their role, the purpose of the session and the role of the support people, if relevant. There is then discussion and sharing of facts and feelings about the offence by the victim and then the offender. The second part of the session may focus on a discussion of losses, and any agreement reached between the parties which may involve some form of restitution.

There is a private session during the mediation which allows the mediators and parties time to review how the mediation is proceeding. This gives the mediators the opportunity to explore with the parties individually any concerns they might have, any undisclosed issues, and reasons for any lack of disclosure. This private session also provides the opportunity to re-assess the parties' expectations of likely outcomes, with the possibility of terminating the session if one of the parties' expectations have changed from the outcomes agreed to at the intake session.

If restitution is agreed to by the parties it is generally restitution that is directly related to the offence, for example, cleaning off graffiti, or repairing a damaged letter-box. However, where a direct link cannot be made between the offence and making amends, there is capacity for other limited reparation to be agreed to, such as, helping the victim (or other person or group nominated by the victim) with shopping, sweeping up leaves in the garden,

and so on. The session may result in an apology or the return of property stolen, or simply end in an exchange of feelings and comments about the offence.

If, during any stage of the process the mediator decides that mediation is not an appropriate course of action, the case is referred back to police. There will always be a report sent to the referring police on the outcome of mediation. On receiving the feedback report from the mediation centre, police decide whether any further action will be taken in relation to the young offender.

The mediation session may reveal support needs which the young person or the victim may have. In the de-briefing with the coordinator after the mediation session, the mediators will identify these support needs. Appropriate referrals will be followed up by the coordinator.

Issues and Challenges

During the consultation stage a number of issues were raised which needed to be addressed prior to the implementation of the pilot program. Many of these issues relate to the rights of the young person and the needs of the victim. It has been recognised that the legal issues associated with this program are significant due to it being a pre-charge option and therefore sitting outside the formal and accountable court structure. In developing the program and the evaluation proposal, the Steering Committee has been conscious of these issues and has developed strategies to ensure that the rights of young people and the needs of victims are protected.

Outlined below are the key legal and ethical issues that have been identified and the strategies that have been put into place to address them.

Due process

A prerequisite of participating in the mediation program is for the young person to admit responsibility for the offence to police. Therefore, there may be an inducement to admit responsibility for the offence even if innocent, in order to avoid a court appearance.

However, police need to determine that the young person takes responsibility for the offence prior to offering referral to the program. This process also applies to the police cautioning program, that is, the young person admits guilt before being offered a police caution. If at any stage prior to the mediation or during the mediation session the young person expresses a lack of responsibility for the offence, the mediation will not proceed and the young person will be referred back to police.

Balance of power

In victim-offender mediation there is an imbalance of power because both parties are not seen as contributing to the "conflict". One of the individuals has been violated, therefore, special sensitivity must be shown to the victim to ensure that further victimisation does not occur. However, in terms of the offender, he/she comes to the mediation feeling inferior because of the act

committed, perhaps because of age, communication skills or social/economic position. This power imbalance can be addressed partly by the use of two mediators, the involvement of a parent in the mediation session and support people for the victim.

Potential to net-widen

A potential problem with any new criminal justice program is that offenders may be subject to greater intervention in their lives than if the program were not available. In the Victim-Offender Mediation program only those young people who face the prospect of being charged and taken to court are eligible for the program. This ensures that it is truly diversionary.

However, another aspect of net-widening is that the young person who participates in the mediation program may be subject to a more onerous undertaking than if he/she had gone to court. In order to ensure that this does not occur, or at least is minimised, several guidelines to control mediation outcomes have been developed.

Why is there a need to control mediation outcomes? In Victim-Offender Mediation there is a need to control mediation outcomes to ensure fairness and equity so that both the victim and the young person perceive the process and outcome to be fair and just. The distinct characteristic of victim-offender mediation which highlights the need to control the outcome of mediation is the situation power imbalance between victim and offender. The victim who has been violated may expect the offender to make amends by undertaking work or payment which is not only out of proportion to the offence but also outside the scope of what other young persons might be subject to in similar circumstances or if they had proceeded to court. The young person may be placed in a position whereby he/she feels obliged to undertake the victim's request regardless of whether it is perceived as reasonable or not.

The goal of the program is not restitution, even though limited restitution may be a component of the mediation agreement. The following principles guide the restitution component of the mediation process.

- The young offender should not have to undertake any work which is out of proportion to the offence. (Any agreed restitution will not be more onerous than a disposition the young person might have received if he/she had gone to court. The *Children and Young Person's Act 1989* makes provision for a sentencing hierarchy of orders in the Children's Court, whereby a more interventionist disposition cannot be considered before a less interventionist disposition. VOMP strives to be consistent with the spirit of this legislation by ensuring minimum intervention in the young person's life.)

- The young person takes responsibility for the offence by being given the opportunity of personally restoring the damage done. It is not for the family to assume this responsibility on behalf of the child.

- Any agreed restitution should as far as possible be related to restoring the damage done by the offence.
- The mediation process and any agreed restitution should be completed in as short a time as possible.
- There should be incentives for both victim and offender to participate in the program.
- The mediator should play a neutral role in the mediation session and not direct the outcome.

In order to ensure that these principles are followed, it is imperative that the expectations of the victim and the offender about the mediation process and its outcomes are realistic, before there is agreement to participate in the program. As the mediators cannot direct the process, the intake worker's task is to communicate the realities of the program to the victim and fully explore the victim's and offender's perspectives of desired outcomes prior to mediation. For example, a victim who wants $1,000 to repair a damaged fence or for the young person to mow his/her lawn for the next ten weeks might be imposing a far greater commitment on the young person than if he/she had gone to court. In this situation the intake worker would indicate to the victim that this would not be a realistic outcome. On this basis, the victim might choose to withdraw from the program or to continue participating.

Guidelines for Mediation Outcomes Mediation outcomes will generally not exceed:

- an apology by the offender to the victim or/and,
- return of stolen property or/and,
- repairing the damage caused by the offence (the capacity of the young person and degree of difficulty of the task are taken into consideration) or/and,
- a small monetary payment or/and,
- other minor chores for the victim which are time-limited (maximum of four hours work).

Double jeopardy

Double jeopardy can be another means of net-widening. A young person may willingly participate in the program and make every effort to fulfil the agreed restitution, but for whatever reason, the mediation breaks down and the victim is dissatisfied with the outcome. Double jeopardy occurs if the young person is taken to court and punished not only for the original offence but for the mediation breakdown as well.

Several strategies have been implemented to ensure that this does not occur. First, there are confidentiality protections providing that information about the mediation proceedings are inadmissible in court if the original matter is referred there. Therefore, the magistrate will impose a disposition based on the original offence only. Second, the matter will not be referred to court by police, unless the child did not participate in the mediation process in "good faith". This will be determined by the coordinator of the dispute settlement centre where the mediation took place, in a report to police. "Participation in good faith" means that the young person was genuine in his/her motivations to participate in the mediation program with the victim and at no time demonstrated "mala fide", or bad faith. Even though a critical element of the program is the victim's satisfaction with the outcome, it is equally important that the young person be genuinely motivated and willing to make amends to the victim. This is what will be reported to police even if the mediation breaks down.

Other issues

Acceptance of Program by Police The Victim-Offender Mediation program relies on police to refer participants. Initially, and still to some extent, some police have viewed the program as a soft option for the offender and not recognised the benefits for the victim. However, other police acknowledge that the confrontation with the victim may be a very difficult experience for the young person and that participation in the program is not an easy choice to make.

Do Victims and Offenders Really Want to Meet Each Other? It has also been suggested that victims and offenders do not want to meet each other. However, most victims pass through a phase of searching for an explanation about why the crime occurred. Gaining insight into the offender's motivation may sometimes be important. Data from a recent study in the USA indicate high levels of victim and offender satisfaction with the mediation process and outcomes. Other indications are that victims who participate in the mediation program have lower levels of fear of further victimisation than victims who have not met the offender through mediation (Umbreit 1989).

Program Update and Evaluation

The pilot program has been in operation in Frankston for seven weeks and for one week at the Geelong Dispute Settlement Centre. There have been five referrals to date, four of which have not completed the mediation process.

The program got off to a slow start with no referrals for the first six weeks. Consequently, the selection criteria were modified to open up the program to young people who may have had up to two previous court appearances not just first and second offenders.

The evaluation of the program is being undertaken by the Bureau of Crime Statistics and Research and will address process and outcome issues. Process issues are those associated with the operation of the program, such as,

referrals and expectations of parties. The outcome component is designed to measure the impact or consequences of the pilot in relation to various performance criteria. Examples of outcome issues include victim/offender satisfaction, and how the program compares to other criminal justice sanctions.

Specific issues such as net-widening, voluntariness of the program, proportionality to court dispositions, victim/offender satisfaction with the program, and attitude change will be addressed in the evaluation.

The evaluation consists of semi-structured interviews conducted with offenders and victims as soon as possible after the completion of mediation proceedings. Participation in the evaluation interviews is on a completely voluntary basis. Informal "round table" discussions will also be held with police and mediation centre staff mid-way through the evaluation and near the end of the six-month period.

Conclusion and Recommendations

It is far too early to make any assessment of the pilot Victim-Offender Mediation program. However, one clear benefit already apparent from the implementation of the pilot program is the raised awareness and interest by criminal justice agencies and the community in looking at crime and its resolution in a new and positive way. Crime is the result of multiple problems which need to be addressed by many different approaches at various levels. Accordingly, VOMP will not be the panacea to youth crime, but an alternative approach which may be suitable for a limited number of young people and victims.

With growing concern about the ability of the judicial and penal systems to rehabilitate offenders and prevent recidivism, the encouraging results of victim-offender mediation programs will hopefully lead to further evaluation and fine-tuning of such programs. The cost-benefits of these programs to the criminal justice system need to be examined in the context of the overall benefits to the victim, the offender and the community generally.

In conjunction with victim-offender mediation/reconciliation programs, there must also be adequate support systems in place for victims of crime and young offenders, which are accessible and aim at empowering the individual, not creating dependence. Finally, the justice system needs to become far more responsive to victims of crime by acknowledging their central role within the criminal justice process. This can only be achieved when the specialist third parties in the criminal justice system, that is, judges, prosecutors, defence lawyers, and others start to recognise that crime is a conflict between the offender and the victim, not the offender and the state. This will require a major shift in criminal justice policy and is a challenge we all need to work towards.

References

David, J. 1986, "Informal justice", in *Pre-trial Diversion for Adult Offenders*, ed. R. Snashall, Seminar Proceedings No. 2, Australian Institute of Criminology, Canberra, pp. 47-60.

Fattah, E. 1991, "From crime policy to victim policy. the need for a fundamental policy change", *International Annals of Criminology*, vol. 29, nos. 1-2, pp. 43-60.

Sumner, C. 1987, "Victim participation in the criminal justice system", *ANZJ of Criminology*, vol. 20, pp. 195-217.

Umbreit, M. 1989, "Crime victims seeking fairness not revenge; toward restorative justice", *Federal Probation*, pp. 52-7.

Umbreit, M. & Coates, R. 1992, "The impact of mediating victim offender conflict: an analysis of programs in three states", *Juvenile and Family Court Journal*, pp. 1-8.

van Dijk, J.J.M. 1991, "Crime prevention and the police", Second International Conference on Urban Safety, Drugs and Crime Prevention, Paris.

Victoria Parliament, Legal and Constitutional Committee 1987, *Report to Parliament upon Support Services for Victims of Crime*, Government Printer, Melbourne.

Wundersitz, J. 1992, "The netwidening effect of aid panels and screening panels in the South Australian juvenile justice system", *ANZJ of Criminology*, vol. 25, pp. 115-34.

DIVERSIONARY PROGRAMS IN OPERATION IN VICTORIA[1]

Vaughan Duggan

OVER THE PAST DECADE THE PARTICIPATION LEVEL IN VICTORIA'S JUVENILE justice (Children's Court) system has declined significantly. Large reductions are evident in both community based and custodial dispositions which are the responsibility of Community Services Victoria (CSV). Overall, some 1,400 less young people are receiving the higher level tariff dispositions in 1992 than in 1980. Almost 200 less young people are detained in Youth Training Centres (YTCs) than in 1980.

Table 1 shows a reduction of 48 per cent in the number of young people (aged 10-16 years) entering community based dispositions supervised by CSV since 1980-81. The most significant reduction involves probation where the decline in numbers entering this disposition is approximately 66 per cent since 1980-81.

Table 2 figures are community based stock figures indicating a reduction of 56 per cent in the numbers of young people on community based orders as at June of the particular calendar year since June 1981.

Table 3 shows a reduction of 57 per cent in the number of young people (aged 10-16 years) entering custodial dispositions (Youth Training Centres) since 1980-81.

Table 4 indicates that the occupancy rates for (Children's Court) Youth Training Centres have been reduced by 85 per cent since 1981. The participation rates of young people in the higher tariff dispositions (from the Children's Court) with respect to the total age cohort and those who appear before the Children's Court, are very low.

---

1. The opinions in this paper are those of the author and not necessarily those of CSV.

Table 1

Young People Entering Community Corrections, Victoria, 1980-81 to 1991-92

Year	*Probation*	*Youth Supervision*	*Youth Attendance*	*Parole*	*Total*
1980-81	1,626	-	-	247	1,873
1981-82	1,687	-	-	252	1,939
1982-83	1,757	-	-	213	1,970
1983-84	1,453	-	-	235	1,688
1984-85	1,215	-	-	232	1,447
1985-86	1,266	-	-	200	1,466
1986-87	1,155	-	-	205	1,360
1987-88	976	-	-	246	1,222
1988-89	937	*79	-	242	1,258
1989-90	783	107	-	197	1,087
1990-91	698	**109	-	183	990
1991-92	560	97	117	197	971

* Part Year Only
** Commencement in rural Regions

Table 2

Young People Under Community Supervision (as at 30 June), Victoria 1981-1992

Year	*Probation*	*Youth Supervision*	*Youth Attendance*	*Parole*	*Total*
1981	1,703	-	-	146	1,849
1982	*1,770	-	-	154	1,924
1983	*1,670	-	-	140	1,810
1984	1,431	-	-	118	1,549
1985	1,296	-	-	123	1,419
1986	1,207	-	-	123	1,330
1987	969	-	-	115	1,084
1988	829	-	-	130	959
1989	696		59	134	889
1990	610		58	119	787
1991	618		69	123	810
1992	602	***106	61	111	880

* Estimate only
** Includes Adult Court Parole
*** This order commenced 23 September 1991

Table 3

Total Number of Young People Entering CSV Youth Corrections Services, 1980-81 to 1991-92

Year	*Probation*	*Youth Supervision*	*Youth Attendance*	*Parole **	*YTC*	*C.C. Total*
1980-81	1,626	-	-	247	694	2,567
1981-82	1,687	-	-	252	647	2,586
1982-83	1,757	-	-	213	469	2,439
1983-84	1,453	-	-	235	458	2,146
1984-85	1,215	-	-	232	500	1,847
1985-86	1,266	-	-	200	494	1,960
1986-87	1,155	-	-	205	396	1,756
1987-88	976	-	-	246	353	1,575
1988-89	937		79	242	276	1,534
1989-90	783		107	197	216	1,303
1990-91	698		109	183	198	1,188
1991-92	560	117	97	197	122	1,093

* Includes Adult Parole

Table 4

Young People in Youth Training Centres (as at 30 June), Victoria, 1981-1992

Year	**Turana*	*Nunawading*	*Malms*	*LKK*	*Bays*	*Total*	*Total Children's **Court*
1981	167	83	79	61	46	436	266
1982	121	69	73	52	48	363	208
1983	136	62	87	64	45	394	213
1984	135	74	69	61	42	381	221
1985	171	71	67	48	33	390	245
1986	147	86	59	48	30	370	233
1987	126	50	73	64	-	313	146
1988	131	48	75	64	-	318	149
1989	107	38	51	56	-	252	105
1990	111	28	43	49	-	231	99
1991	72	19	35	49	-	175	61
1992	50	5	45	40	-	140	40

* Youth Training Centre and Youth Residential Centre (from 1990-91). Prior to that date many of these residents would have been wards, rather than solely adjudicated offenders.

** Best estimate and excludes Turana Classification Section and Malmsbury (Malms) and Langi Kal Kal (LKK) YTCs which handle adult court dispensations. These figures also include remandees.

Table 5 indicates that only 1.38 per cent of all young people appear before the Children's Court and only 12 per cent of all young people appearing before the Court receive the higher tariff dispositions. An extremely low 0.02 per cent of all young people receive a custodial sentence.

Table 5

Victorian Offending Pyramid (10-16 Years), 1981-1992

		Numbers		*%*
YTC-YRC—Custodial		137		0.02
YAO	}Community	76		
Probation	}Based	643		
YSO	}Supervision	209	928	
Other Court Orders-Non Supervised			7,934	0.16
Total Court Appearances			9,000	1.38
Offenders Detected and Warned			*11,000	1.89
Undetected Offenders			*40,000	6.90
Non Offenders			*520,000	89.65
Total—10-16 years Cohort			580,000	100.0

1992 Court Statistics (Jan-Dec)
*Estimates only

Diversionary Strategies

In analysing why the Victorian juvenile justice system diverts many young people it is instructive to consider the various levels of diversion that operate:

- Primary factors are those that operate on the cohort group to reduce their chances of entering the juvenile justice system;
- Secondary factors are those that focus on those young people entering or about to enter the juvenile justice system; and
- Tertiary factors are those that focus on young offenders already in CSV's programs.

Primary diversionary factors

Some of the more important primary diversionary factors that operate in Victoria are as follows:

Strong Mainstream Services Well developed generic services such as education, accommodation, employment and health are essential components in any diversionary framework. When one considers the characteristics of young people who enter the juvenile justice system—particularly their

educational and employment status—which are generally significantly lower than their age cohorts, accessible and relevant educational and labour market programs and opportunities are essential. These requirements are essential in an economy which provides very few opportunities for the more disadvantaged and marginalised groups of young people. Evaluation reports on two Victorian programs have highlighted the importance of the accessibility of accommodation (Inside Out Program) and employment (Victorian Employment Access Program) in diverting young people from the juvenile justice system.

Child Protection Services Community Services Victoria has developed the Victorian Child Protection Service over the past five years to ensure that children and young people receive the support and protection that is required when they are found to be in need of protection on the following grounds:

- They are abandoned or their parents are dead or incapacitated;
- They have suffered or are likely to suffer significant physical, emotional or psychological harm.

This support and intervention ensures that more families stay together and young people are retained in stable lifestyles rather than being subject to behaviour and influences that drive them to risk taking and inappropriate behaviour that often results in entry to the juvenile justice system.

Deinstitutionalisation As a result of a deliberate policy of deinstitutionalisation involving a number of large scale congregate care facilities (Community Services Victoria 1992a) children and young people requiring accommodation and support are assisted in smaller community or home based services. The range of strategies included is in operation to improve the community integration of young people in need of such support:

- The expansion and strengthening of foster care;
- The development of a network of short-term and medium-term small group residential units;
- The implementation of the Adolescent Community Placement (ACP) Program to provide home based care for "at risk" adolescents;
- The Placement Support Worker Program to ensure the successful placement and maintenance of difficult-to-place children;
- Behaviour Intervention Support Teams are providing specialist support in placing children and young people with challenging behaviour. They also aim to reduce the incidence of placement breakdown; and

- The Families First Program which aims to keep children and young people safely with their families in times of crisis, rather than placing them in foster or residential care.

Secondary diversionary factors

Some of the more important secondary diversionary factors that operate in Victoria are as follows:

Police Cautioning Scheme As can be seen from Table 5 approximately 11,000 young people were cautioned by the police in 1992. Given that almost two young people are cautioned in Victoria compared to every young person that appears in court, this is an important element of the diversionary process.

It is felt that by avoiding the court appearance and responding to the cautioning many young people are diverted from more serious offending. It is important to note that of the 10,500 young people cautioned only 285 (or 2.7 per cent) received a further caution.

Court Advice Over the past four to five years, with the establishment of a dedicated and systematic state-wide court advisory service for the Criminal Division of the Children's Court, CSV has been able to assist the courts with the provision of consistent professional and credible court advice. While the provision of court advice is a time-consuming activity, the provision of consistent advice can assist the process of ensuring that the most appropriate and minimal intervention in the young person's life occurs.

Sentencing Practice and Principles Victorian practices are primarily governed by the principles underpinning the *Children and Young Person's Act 1989* (proclaimed in part in September 1991). This piece of landmark legislation provides a number of key principles to ensure progressive sentencing practices consistent with contemporary community standards:

- Equity of treatment;
- Minimum intervention by state authority;
- Minimum appropriate penetration into the juvenile justice system (sentencing hierarchy);
- Maximise rights of individuals-families;
- Cultural values are given due consideration;
- Accountability of workers in contact with young person;
- Maximise participation of young person-family in court process; and
- Separation of needs and deeds in court response.

It is believed that adherence to these principles and particularly those of handing down dispositions that are consistent with the offence and using custodial sentences as a sentence as a last resort, lead to a clear rationale for diverting young people from the juvenile justice system.

Since the proclamation of the *Children and Young Persons Act* in September 1992, no young woman between the age of ten to fourteen has received a custodial disposition. Similarly only eight young men of the same age have received a custodial disposition.

Bail Advocacy While it is clear that certain young people should be remanded pending their court hearing because of the risk they represent to the community and of non attendance at the future court hearing, many others who are remanded could be considered for bail or summons.

Following a review of those young people being remanded to Victoria's (Children's Court) male remand facility at Turana, (Review of Children's Remand and RAP, August 1991) a number of principles were developed in order to make more appropriate use of remand. The principles developed were as follows:

- The process of gaining access to bail is one for the courts to determine rather than administrators;
- Access to, and support for bail, is a significant legal justice issue and consistent with the principles of social justice;
- Potential bailees have the right to out-of-home placements if home is not a realistic option;
- Incarceration on remand is an option of last resort which should be minimised and utilised only when exceptional circumstances exist;
- Advocates for young people should take all necessary steps to support remandees to obtain bail; and
- Young people should be given the opportunity to participate in the bail process by consenting to any conditions of bail being presented on their behalf.

As a result of the review, participants in Victoria's juvenile justice system were encouraged to implement bail advocacy practices that have been in place in the Geelong area for some time (*see* Appendix 1). The numbers on remand at Turana following the implementation of the recommendations of the review have declined from between fifteen to thirty to under ten.

Tertiary diversionary factors

Some of the more important tertiary diversionary factors that operate in Victoria are as follows:

Supervision of Young People while on Community Based Dispositions In Victoria, young people who are placed on Probation, Youth Supervision Order, Youth Attendance Order and Parole are supervised by CSV youth officers (and social workers in rural regions), according to guidelines outlined in practice manuals. The key feature of CSV's supervision of young offenders is the adherence to systematic Client Service Planning (Mansfield 1992) recently introduced.

It is clear that in order for young people on correctional orders to fulfil the requirements of the order, without reoffending, they need both intensive and sensitive support. This is achieved through Client Service Planning which involves a thorough assessment to determine the services and programs that should be accessed for these particular young people.

While not all young people succeed in completing their community based order, it is estimated that over 70 per cent complete their orders successfully.

Rehabilitation whilst in Youth Training Centres In recent years CSV has devoted a lot of effort to developing generic and specialist services to aid the rehabilitation of young offenders held in custody (at Youth Training Centres). This approach has been taken to address the many needs that are clearly evident with those young people who receive a custodial sentence. In order to deliver these services in an individual, systematic and coordinated way, Client Service Planning (CSP) systems have been introduced. Under CSP, priority needs such as health (particularly drug and alcohol issues), employment, education, recreation, personal development, community integration and confronting offending behaviour have been addressed.

In order to ensure a complete and coordinated approach to the delivery of all health services (which are a high need requirement of young offenders), CSV, in conjunction with the Health Department of Victoria, has established a Young Offenders Health Board and Young Offender Health Service (*see* Jones 1992). This has resulted in improvements in four key areas:

- Alcohol and drugs
- Infection control
- Basic health care
- Psychiatric and psychological matters

Similar efforts have been made to address young offenders' needs in the area of employment (Victorian Employment Access Program) (Sumner et al. 1988), vocational education and training (Vocational Education for CSV Young Offenders, CSV Industry Training Plan for 1993, (CSV 1992b, 1992c)) and confronting offending through the Confronting Offending Program (CSV 1992d).

Post Release Supervision **I**n Victoria there are two post release supervision programs in operation—parole and supervision of young people released from YTCs on remissions.

Parole involves the release of the young person (usually with a sentence of more than eight months) under the supervision of a case worker who

provides both supervision and support through the latter part of the sentence. A statutory board called the Youth Parole Board (YPB) is responsible for all decisions with respect to suitability for, and times of parole. The key feature of parole is that the young person completes the full term of the sentence, but can be supported and assisted in reintegration into society through restricted participation in community life. The YPB estimates that 70-75 per cent of all young people successfully complete their parole.

For those young people on shorter sentences (ie less than 8 months), a new program has been introduced (Inside Out Program) which involves intensive support and assistance to those young people leaving Youth Training Centres without the involvement of a parole officer. This program, operated jointly by Crossroads and Care, Communication and Concern, has intensively supported fifty-five young offenders in its first twelve months. Early indications are that none of the program participants have reappeared before the courts for offences committed after their entry to the program.

The key features of this program include :

- Intensive support on release;
- Relationship building with the young person from early in their custodial period;
- Provision of accommodation that usually has been out of reach of the participants in the past;
- Linkages to recreation and leisure activities;
- Linkage to employment and training opportunities; and
- An external evaluation of the Inside Out Program, which is due for completion in October 1992.

Subject to funding, it is proposed to expand this project to young women leaving Youth Training Centres and some young women on community based orders.

Conclusion

It is clear that to minimise recidivism, intensive support and provision of many services are required for those young people leaving custodial facilities. While young people should be encouraged to be independent over time, it is essential because of their vulnerability, marginalisation and often limited skills that they be supported through this very critical time.

References

Community Services Victoria 1991, *Review of Children's Remand and RAP*, Community Services Victoria, Melbourne.

---------- 1992a, *Only One Life*, Community Services Victoria, Melbourne.

---------- 1992b, Community Services Victoria Industry Training Plan 1993, Community Services Victoria, Melbourne.

---------- 1992c, Vocational Education for CSV Young Offenders—June 1992, Community Services Victoria, Melbourne.

---------- 1992d, *Confronting Offending Program*, Community Services Victoria, Melbourne.

Jones, G.W. 1992, *Developing a Young Offenders Health Service*, Community Services Victoria, Melbourne.

Mansfield, P.A. 1992, *Client Service Planning*, Community Services Victoria, Melbourne.

Sumner, K., Polk, K., Semmens, R. & Feinberg, B. July 1988, Employment Access Program: Evaluation Final Report, Criminology Department, University of Melbourne.

APPENDIX 1: Features of the Otways Region protocol for Diversion From Institutions

1. Commitment to deinstitutionalisation from accommodation services and to keep young people in their own "region" and not placed in central institutions.

2. For placement in a central institution the level of "risk" either to the community or the young person should be clearly demonstrated. All local options are explored, considered and attempted before considering placement in a central institution.

3. Proceeding by summons or the granting of bail should occur under the same conditions that apply to adults—the primary consideration is whether the person will attend the court or whether the person is a risk to the community.

4. Accommodation services designed to assist young people from entering institutions are known to the network associated with the protocol.

5. Each service is described in a formal document with telephone numbers, and who can refer, selection criteria, nature of service and times of service.

6. Volunteers ("minders") are utilised to supervise bailees in their own accommodation if necessary, and commence supervision immediately. Minders also transport the bailee to his-her accommodation if necessary.

7. Volunteers and accommodation providers ensure that the young person attends court, are responsible for intensive support and supervision in the interim period of adjournment, and liaise with other professional staff such as Police, legal representatives and CSV social workers as required.

8. The protocol is monitored through the local Young Offender Services Advisory Committee (YOSAC).

PREVENTATIVE AND DIVERSIONARY PROGRAMS IN WESTERN AUSTRALIA

Paul Bartholomew

WESTERN AUSTRALIA HAS TRADITIONALLY PROCESSED A LARGE NUMBER of juveniles through its formal justice system. This over involvement of the formal juvenile justice system in dealing with offending youth is evident in a number of crucial measures, which include:

- the high percentage of juveniles arrested rather than summonsed. Some 73.1 per cent of the young people who appeared in the Children's Court in 1991-92 were arrested (unpublished data supplied by Western Australia's Youth Prevention and Diversion Unit).

- a small percentage of young people being diverted from the formal court system. Before the introduction of police cautioning in the year 1991-92, only 25 per cent of offending juveniles were diverted from the Children's Court (Youth Justice Bureau 1993a).

- the large number of young people who appear before the court. In 1991-92, some 7,554 young people appeared in the Children's Court and before a panel on a total of 28,053 charges (Youth Justice Bureau 1993b). This represents 3.9 per cent of the youth population, based on the 1986 census. As of 30 September 1991, the incarceration rate for juvenile males was 90.3 per 100,000 (Commonwealth Department of Health, Housing and Community Services 1991).

The problems facing young people in Western Australia are essentially no different from those being faced by young people in other parts of Australia. Similarly, there is little evidence to suggest that the rates of offending or indeed serious offending is any higher in Western Australia. The major differences do not lie in the extent and nature of the offending but rather in how the system responds to offending.

A number of preventative and diversionary measures have been implemented in the last few years to reduce both the level of offending and

the number of minor offenders who appear in court. This paper will outline the most significant of these, and their impact on the juvenile justice system.

Prevention

In 1988 the Western Australian Government launched its "kids and crime" package. This provided funds for employment and training, local offender and school support programs, parent skills training and alcohol and substance abuse programs.

The local offender programs were initially established in seven locations to target offenders and young people at risk of offending. They bring together representatives from government departments, local government and the community. Involving parents and significant adults is also an integral part of the programs. Each community develops a range of recreational, educational and vocational training to meet the needs of local young people.

The local offender programs have been very successful, both in terms of the number of young people who participate in the programs and in the decline in offending rates for young people in the targeted areas. The rate of offending declined in all but one of those locations where the local offender programs were initially established. Due to the success of these initial programs, local offender programs have been extended to a total of twelve locations across the State.

Failure at school and low academic achievement have been experienced by many recidivist offenders. Social and academic failure are manifest early in school life. In order to help ameliorate some of these problems, the Department has developed a number of educational programs for offenders and young people at risk in recent years. These include:

- an early education program for families of children up to eight years;
- a home-school support program for students six to sixteen years who are clients of, or are known to the Department;
- a community based education program for children not attending school;
- a transition program to education, training and/or employment, including
  - an alternative program for disruptive young people, and
  - programs for young Aboriginal people;
- an automotive skills training program. The Balga and Girrawheen automotive skills development program was established in the northern suburbs of Perth to provide young repeat offenders with educational, employment and training options involving the skills required for the maintenance and repair of motor vehicles. The project has also entered vehicles at the Ellenbrook speedway.

The "kids and crime" package has also been used to fund a number of programs that target conflict experienced by adolescents. These include:

- Steering Clear: this program assists parents to cope with their adolescent children. This service is provided by the marriage guidance council. Some 280 parents attended this program in 1991-92.

- Parent Teen Link: this is a preventative program for youth and their parents. This service is provided by Centrecare. Approximately 165 families attended this program in 1991-92.

- Youth Mediation Service: this program provides counselling for young people who are in conflict with their parents, other adults and the law. Approximately 144 families attended this program in 1991-92.

A number of organisations are also funded to provide alcohol and drug abuse prevention programs. Young people may be referred to these programs by the court, their parents, the Department or themselves. A total of 370 young people attended the Holyoake program in 1991-92.

The Department is also seeking to upgrade its treatment services for sex and violent offenders, and for offenders with substance abuse problems. A network of carers for drug affected young people is being developed. The Department is also seeking to purchase placements in a residential detoxification program.

The Department also funds the youth legal service to provide a law education program. The children's court may direct offenders to attend sessions dealing with the law, its purpose and the effects of offending on victims. Approximately 127 young people attended this program in 1991-92.

The Mentor Scheme is another important program which involves the recruitment of local people to work with young offenders and act as role models. Although it is offered to young people who have been released from detention or who are on orders, it is essentially a preventative program. The scheme assisted fifty-four juveniles in 1991-1992. The use of mentors will be significantly expanded in 1992-93 with the establishment of a taskforce to target approximately one hundred of the most serious repeat offenders in the metropolitan area. Funds will be provided to employ up to one hundred mentors to guide and support these young people.

The majority of recidivist offenders are unemployed. They typically lack the skills to obtain and maintain employment. Moreover, the high levels of youth unemployment make it even more difficult for them to obtain employment. Assisting young repeat offenders in employment and training is seen as a crucial step in reducing the likelihood of these young people reoffending. The YMCA is funded by the Department to assist recidivist offenders into employment or training. The Worksyde program has been very successful in meeting its objectives. In 1991-92, Worksyde worked with 359 young people, of whom 256 were placed in employment and/or training.

The programs outlined in this paper are an indication of the major preventative strategies that are currently being adopted in Western Australia. Many court sanctions also have a rehabilitative or preventative focus. However, they will not be described, as they fall outside the scope of this paper.

It is evident that the major strategies underlying these programs are: early intervention; the adoption of a whole of government approach; community involvement; funding private agencies to provide services where appropriate; targeting programs to address local needs; supporting families; and placing emphasis on education and employment.

Considerable importance is also placed on developing program objectives and performance indicators. It is essential that all programs are evaluated to ensure that they are effective, and to enable them to be improved and modified where necessary to meet changing circumstances.

Regardless of the effectiveness of preventative programs, it is inevitable that many young people will offend. Minor offending is frequently a part of the process of maturing and becoming an adult. As labelling and prematurely entering the formal justice system can increase the likelihood of young people becoming recidivist offenders, it is imperative that minor offenders are diverted from the court system. The next section of this paper will outline some initiatives that have been taken in Western Australia to increase the number of young people who are diverted from the formal justice system.

Pre-court Diversion

Western Australia processes a large number of young people through the formal justice system. Only a small portion of young people are diverted from the courts. Most young people who appear in court proceed by way of arrest.

The Department held discussions with the police over a number of years about the high percentage of arrests. As a result of these discussions, the use of summons has gradually increased. Summonses now account for 26.9 per cent of young people who appeared in court. The key to restricting the use of arrest to serious offences is to make it easier and simpler for police to proceed via summons.

An alternative to the use of a summons is a "notice to attend". This would involve a police officer giving an alleged offender and his or her parents a notice to attend court. A legislative amendment in 1991 provided for its use. However, there are still some procedural difficulties which have deterred police from using the notices. Discussions are occurring in order to eliminate these procedural disincentives. Once these issues have been resolved, notices to attend should become a more attractive option for police in getting minor offenders to appear before the court. Greater use of summonses and the introduction of notices to attend should help to reduce the over-use of arrest for juveniles in Western Australia.

The children's panel has been the traditional means of diverting young people from the more formal children's court. In 1984-85, 4,345 young people appeared before the panel. Since the mid-1980s, the number of young people

appearing before the panel has been steadily declining. This trend has become even more marked following the introduction of police cautioning. In 1991-92, some 1,897 young people appeared before the panel. This represents only 25 per cent of the total number of young people who appear before the court and panel (Youth Justice Bureau 1993a).

Not only does the panel divert a relatively small percentage of young people, it is still a fairly formal means of dealing with offenders. An examination of young people to appear before the panel indicates that most are very minor offenders. It is therefore not surprising that more than 60 per cent of young people who appear before the panel for the first time do not re-offend. Similarly, 57 per cent of young people with one to two court appearances do not re-appear in court. The question that needs to be asked is what percentage of this group would re-offend if they were diverted prior to appearing before the panel or court?

In order to divert more minor offenders from the court system, the police formal cautioning system was introduced on 1 August 1991. This was a joint Police Department and Department for Community Services initiative.

The decision to introduce police cautioning was based on the following rationale:

- early and unnecessary contact with the criminal justice system can be counterproductive and may actually increase the likelihood of offending;
- offending by young people is often opportunistic, trivial and transient;
- cautioning is a more efficient means of dealing with minor offending;
- cautioning would provide police with the opportunity to contact parents which would encourage parental involvement and responsibility.

From August 1991 to May 1992, 3,226 cautions were issued. During this period there was a 9.7 per cent decrease in the number of charges being dealt with by the court, a 33.6 per cent decrease in the number of individuals appearing before the court for the first time, and a 38 per cent decrease in the number of individuals attending the panel.

Some 63 per cent of all cautions were for property offences, 7 per cent were for minor drug offences, 8 per cent were for public order offences, 5 per cent were for traffic offences, 5 per cent were for truancy, 4 per cent for minor assaults and 8 per cent were for a range of miscellaneous offences.

To compliment the introduction of police cautioning, the Department for Community Services established the Killara Youth Support Service. Police officers are able to contact Killara if they have any welfare concerns regarding an individual. This enables Killara to provide a range of services to families.

In Perth, the Police Department send all their caution notices to Killara Youth Support Service. Where a need is identified, the service contacts families to offer support and assistance. This service, combined with the

police caution, make the system more than just a reprimand. When the police issue a caution, they are diverting young people from the court. When Killara assists families, they are providing a preventative service.

The Department's reparation program has also the potential to be both preventative and diversionary. Three pilot programs were established in May 1991 in Midland, Bunbury and Northam. They involve young people apologising or agreeing to make some form of restitution to the victims of their crimes. The restitution could involve repairing the damage or undertaking some other work on behalf of the victim. To date, magistrates have referred young offenders to the reparation meetings. The court is advised of the outcome of the reparation meeting. The charge can then be dismissed, or the court may give the youth another penalty. An evaluation of the three pilot programs indicated that reparation has been viewed positively by magistrates, victims and offenders. In view of the promising outcomes obtained in the pilot projects, the scheme is being extended to other courts across the State. Reparation meetings also have the potential to become a pre-court diversionary program.

The government's "social advantage" package recently announced the establishment on a pilot basis of four community based youth justice teams. It is a diversionary scheme which seeks to develop a system of dealing with juvenile offenders to directly accommodate the needs of the offenders and victims. It also empowers families to take responsibility for their children and enhances community based responses to offending. The main role of the youth justice teams is one of brokerage rather than service provision.

Each team will consist of a representative from the Youth Justice Bureau, the Ministry of Education, the Police Department and local Aboriginal community. A model for its operations is currently being refined so that the scheme can commence in late 1992. It is envisaged that the youth justice teams will lead to the full introduction of the New Zealand system of family group conferences. However, in the interim, the youth justice teams will have the option of holding family conferences when dealing with young people appearing before them. The introduction of youth justice teams and family group conferences will be accompanied by an ongoing effort to increase the rate of cautioning.

The diversionary initiatives outlined should lead to a significant reduction in the number of young people arrested and in the number of less serious matters being dealt with by the court. The directorate is aiming to have approximately 60 per cent of young people diverted from the justice system, as a result of the introduction of police formal cautioning, reparation meetings, youth justice teams and eventually the introduction of family group conferences.

Diversion from Custody

Detention orders are necessary for a relatively small number of young people who are serious or recidivist offenders. The loss of liberty associated with secure detention provides offenders with a significant consequence for their offending. Incarceration should also provide an opportunity for offenders to

receive education, training and rehabilitation programs. However, although programs can be provided in prisons or detention centres, they are not the ideal environment to teach employment skills or pro-social behaviour. Indeed, the negatives associated with imprisonment frequently outweigh any potential benefits. It is therefore essential that maximum use is made of alternative to custody programs, where it will be of benefit to the individual but will not endanger the public. The Department for Community Cervices has a number of programs aimed at diverting young people from secure detention.

The Department has placed young offenders on what were essentially conditional release orders since the early 1980s. This arrangement was formalised in 1989, when legislative amendments allowed courts to conditionally release young people after making a detention order. These orders enable young people to remain in their employment, seek work, attend educational programs or participate in work programs. Curfews or other conditions may also be imposed on the young offenders. A failure to abide by the conditions of the contract will result in the young person returning to court and possibly being placed in a detention centre.

Young people on conditional release orders undertake a range of work for government departments, local government authorities and community organisations which includes: gardening and maintenance, rehabilitating parks and sand dunes, building pergolas, gazebos and other structures, and repairing damage to properties. Considerable emphasis is also placed on assisting victims of crime by removing or painting over graffiti, collecting litter and repairing vandalism.

Many country pastoral stations in the Murchison, Pilbara and Goldfields take young offenders on conditional release orders. A placement on a country station enables a young person to learn such skills as fencing, building and repairing windmills, horse riding and mustering. Employment officers assist the young person to find employment at the conclusion of their orders. The Department also places young people on conditional release orders on its farm at Warramia, north of Perth.

Young Aboriginal people are able to undertake conditional release orders at Lake Jasper in the south west of the State. This project was established by the Gnuraren Aboriginal Corporation. Other Aboriginal communities are also being contracted to provide culturally relevant programs for young people on conditional release orders.

Selected young people sentenced to periods of detention are also able to serve part of their order on country stations, Warramia and Lake Jasper. As with conditional release orders, these alternative to custody programs place the young people in a positive environment where they are able to learn a range of vocational skills. With these newly acquired skills and confidence, the young person can often be assisted to find employment. When compared with young people in the detention centres, the young people on the Murchison country station programs appear at this early stage to have had lower rates of offending.

The strategies and programs outlined should be seen as first steps in reducing offending, diverting minor offenders from the formal justice system

and providing recidivist offenders with relevant training programs in a positive environment.

References

Commonwealth Department of Health, Housing & Community Services 1991 *Welstat Report*, Commonwealth Department of Health, Housing & Community Services, Canberra.

Western Australia. Youth Justice Bureau 1993a, *Cautioning report*, S*tate Overview of Trends in Juvenile Offending 1991-92*, Youth Justice Bureau, Perth.

---------- 1993b, *State Overview of Trends in Juvenile Offending 1991-92*, Youth Justice Bureau, Perth.

VISIONS FOR THE FUTURE[1]

Sue Vardon

THERE ARE MANY LESSONS THAT I'VE LEARNT AND I'VE TRIED TO BE HERE as much as I could over the last three days because this is the single most important conference to have taken place in South Australia in the last year.

My first point is that we are faced with the fact that the over representation of Aboriginal young people in the juvenile justice systems is a national crisis. Instead of wringing our hands I think we have to acknowledge that there are many Aboriginal people working on projects, there is intervention, and one of our responsibilities is to promote those projects in any way possible.

Secondly, the better the information we are able to provide on youth offending and offenders, the more sympathetic is the response. This places great pressure on us to improve our information systems, to involve more people in crime prevention and planning programs, and to educate the community towards a more sensitive attitude.

Thirdly, good policing contributes to crime reduction and I think that is the lesson from Wagga Wagga. It does not matter what you call it, it is about good policing. If the policing is good, most of the young people should not go into the system. Any new models should build on that as a fundamental part of the system.

Fourthly, most young offenders are poor and abused and equal attention should be paid to their accountability to the community and their needs. We must be very careful not to make a new system which is all about accountability and victim confrontation and forget the extent of abuse. A recent study of twenty-five of the heaviest offenders in South Australia showed that they had very disadvantaged lifestyles.

Fifthly, family conferences have a greater influence than juvenile justice systems. They keep professionals in perspective, and they provide communities with new ways of decision making. They certainly are something very valuable that any new juvenile justice system in Australia should consider seriously.

It is clear that we need to replace the justice/welfare debate with a discussion about restorative justice, integration and republican communitarianism. The notion of citizens replacing victims and offenders is

---

1. With the exception of Sandor's and O'Connell's papers, the contributions in this section are edited transcripts of the final panel and rapporteur's report.

very powerful and should be implemented in any new system we are trying to develop.

A couple of quick cautions: most young people grow out of offending and we have to be terribly careful not to put all of the scarce resources into paying a lot of attention to them. I know that is not always popular, but, we all have children who have stolen Mars bars or have committed other minor offences. We do not need the formal system to provide heavy intervention and external confrontation. Most families deal with these situations quietly and effectively.

My greatest concern relates to a very important principle of international juvenile justice which says that no child or young person should be dealt with more harshly than an adult for a similar offence. It seems to me that some of the things that we have heard, particularly in family conferences, expose a child to humiliation and public confrontation, and that some of the punishments to come out of family conferences, have been very harsh. I think that if we are not careful we will have a system whereby children are in fact dealt with in breach of the principle of parsimony.

Finally, any new reform should keep children's rights as the first priority.

Danny Sandor

I AM ONE OF THE PEOPLE WHO FITS JUDGE BROWN'S DESCRIPTION OF "A sentimentalist on guard". I come to this position having worked as a practitioner and institutional manager within the youth corrections system. We have been asked in this plenary to signal cautions for the way forward. I will begin by focussing on police involvement in the juvenile justice system and conclude by making some criticisms of the Conference centred around the theme of victimisation. These criticisms are intended to be constructive pointers for planning of the next National Conference.

My starting point is an acknowledgment of the point made by Dr Seymour that lawyers have occupied the high ground in the juvenile justice debate until now. At this conference, we have seen a powerful challenge for that turf. Police are vying for an expanded role through joint work with other professionals. They are also keen to see programs that enable them to deal with the outcomes of their investigations through police managed alternatives to court processing.

The overall bid is presented by compassionate representatives of the various police forces present. They display a convincing interest in combining the skills of their force with those of professionals from other disciplines and see benefit in working in tandem when dealing with young offenders.

We should not, however, extrapolate their qualities to those who would implement new initiatives "on the ground". There is a need to recognise the organisational factors which Commander Murray addressed during the panel discussion. Of particular importance was his description of the organisational distribution of discretion, whereby the greatest latitude resides furthest down the chain of command. Such discretion gives great practical power (James & Polk 1988).

While it may sound like a productive strategy to call for joint work between the police and other agencies, this presents enormous difficulties in practice for workers from other fields. The legal obligations of a police officer are different from those of other human services workers. Police must exercise differential discretion in terms of what offences they respond to. Not every jay-walker should be intercepted, yet every brutal attack they witness should be stopped. But what of situations where drug use is observed, or illegal sexual behaviour? The civilian worker does not have any formal legal obligation or power. The same is not so for the police officer, and the response rests within her or his discretion. One need only look at the trivial matters for which young people are formally charged to see how often differences in perspective would arise.

The legal power of police to treat matters as "criminal" will win out in a dispute over professional judgment. That is a structural consequence of the distribution of formal power between police and civilian agencies. Without control by a negotiated policy that is adhered to, I see joint work as untenable. That is not to say I reject the scope for cooperative work. Such an alliance can be productive but only if each professional works within his or her own paradigm.

I would like now specifically to consider the profile which has been given to "family group conferences" being trialed at Wagga Wagga. The National Conference on Juvenile Justice has seen an unwarranted enthusiasm for their use as a means of diversion from court and making reparation to victims. Such interest has been, however, in a context of general agreement by the participants here that new approaches ought to concentrate on the fraction for whom incarceration is nearly or already the last resort. I find the inconsistency between the agreed priority and the interest shown to be striking. Of equal concern is the lack of critical analysis that has been demonstrated at the conference, publicly at least, on the consequences of granting police a further role in juvenile justice (Sandor 1993).

The Wagga Wagga design puts police in the position of convening such conferences and overseeing the process by which the outcomes are determined between the parties. The New Zealand approach uses independent Youth Justice Coordinators (Morris & Maxwell 1993). I believe the Wagga Wagga design is an especially unwelcome departure.

If there is a need for new diversion processes, police should not play the key role. To install police as the conference conveners is to ignore the cultural

and political power of the policing paradigm. It particularly risks promoting an impression of increasing juvenile crime to the public when empirical data is to the contrary (*see* Wundersitz 1993, pp. 53-66 in this volume). Moreover, it grants police further inroads in the control of the juvenile justice system, its agenda and the resource pool.

The Wagga Wagga experiment has been portrayed as an exercise in "community policing" and one in which the community takes the reins in responding to young offending. David Moore's paper acknowledges that the word "community" has come to be a codeword for all that is good in politics. In the context of police centred young offender programs, I would suggest that it has a more specific meaning. It is code for the more conservative segment of the "community", one which has strong links with the police and little experience of conflictual encounters with them (Freckelton 1988).

The Wagga Wagga model is therefore more than yet another indication of the lack of influence over policing priorities and methods accorded to those who are among the most policed. It is a means of granting even further programmatic leverage to police and their supporters. The juvenile justice field cannot afford an even greater imbalance of "community" voices, given the current law and order climate and shortage of basic services.

A good deal of the enthusiasm for the Wagga Wagga model also seems to stem from its attention to the needs of victims. This is a facet of justice system politics gaining increasing currency. It strikes me, however, as astonishing that there remains so much resistance to acknowledging and strategically addressing the victimisation of young people through the juvenile justice system (Alder et al. 1992). The victim discourse is too selectively applied. When the subject is discussed, defensiveness is evident by the reliance on language such as "mistreatment" or "inadequate adherence to standards". What we are really talking about is violence or criminal behaviour. It is time that gatherings such as this encourage greater formal attention to system victimisation and name it for what it is.

The absence of gender as a key theme throughout this conference has been a covert form of victimisation. Young women are clients throughout the system and their position as a minority within the marginalised youth corrections sector leaves them vulnerable to being doubly disadvantaged through being overlooked when assessing program directions. In the context of family group conferencing, for example, the different reality of families and their violence in the lives of young women requires that a feminist analysis be applied to the Wagga Wagga design before it is embraced so whole-heartedly. Future conferences should incorporate such an opportunity in their structure.

A different kind of victimisation through invisibility is evident in the way we approach the treatment of indigenous people in the juvenile justice system. My concern is our failure to come to grips with an understanding of legacy, for example how previous government policies such as child stealing and subordination, together with ongoing inequalities of treatment and resources, result in the over-representation of Aboriginal young people in the juvenile justice system. There is both a moral and practical imperative in determining ways to incorporate a tangible recognition of these legacies in a

structural way rather than just considering them in individual cases. This should be part of our next conference agenda.

Nowhere has this refusal to recognise the legacy been more evident than in the introduction of abhorrent sentencing laws for young offenders in Western Australia (Rayner 1992). We compound that victimisation when we do not call the Federal Government to account for its failure to intervene, using its power to legislate pursuant to international human rights treaties. Unfortunately, there will probably be more laws breaching human rights enacted before the next Juvenile Justice Conference. We must be prepared when we reconvene to pass resolutions that encourage and place pressure upon the Federal Government to take action.

References

Alder, C., O'Connor, I., Warner, K. & White, R. 1992, *Perceptions of the Treatment of Juveniles in the Legal System*, National Youth Affairs Research Scheme, Hobart.

Freckelton, I. 1988, "Sensation and symbiosis" in *Police in Our Society*, eds I. Freckelton & H. Selby, Butterworths, Melbourne.

Hogg, R. & Findlay, M. 1988, "Police and the community: some issues raised by recent overseas research", in *Police in Our Society*, eds I. Freckelton & H. Selby, Butterworths, Melbourne.

James, S. & Polk, K. 1988, "Policing youth: themes and directions" in *Australian Policing: Contemporary Issues*, eds D. Chappell. & P. Wilson, Butterworths, Melbourne.

Morris, A. & Maxwell, G.H. 1993, "Juvenile justice in New Zealand", *Australian and New Zealand Journal of Criminology*, vol. 26, no. 1.

Rayner, M. 1992, "Palm-tree justice: juvenile justice in the West", *Civil Liberty*, no. 3, May.

Sandor, D. 1993, "The thickening blue wedge in juvenile justice", *Alternative Law Journal*, vol. 18, no. 3.

Seith Fourmile

WE ARE JUST TALKING ON VISIONS FOR THE FUTURE AND LOOKING AT THE future, but before we address our future we should actually address our past and that is one thing that we as Australians have not really done: address our past. We can address the future but the future will not go forward, or we cannot go forward with our future if we haven't acknowledged our past and what has happened in the past. Everything that leads up to our future has come from the past.

One thing we should acknowledge in this conference is this inbuilt racism that is still alive and well in Australia. Racism seems to be a dirty word; it used to come up in the 70s all the time, but now in the 80s and the 90s "racism" seems to have dropped out. It seems to be a word that is a bit out of fashion. We talk about discrimination against women and against handicapped people and so on. We talk about discrimination, but we tend to forget about racism, and until we acknowledge that we are racist in our views sometimes, we cannot really address the problems adequately.

We must go on with the visions from the conference, and try and see the Aboriginal perspective—an Aboriginal National Strategy. This came about from the meeting that we had yesterday. One recommendation made by the Royal Commission into Aboriginal Deaths in Custody was that an advisory committee be set up; an Aboriginal justice advisory committee. To this day I have not heard too much about it, but we were talking about an Aboriginal National Strategy that could be implemented in such cases and also should be in the criminal justice system.

Another issue is that Aboriginal issues should be addressed by Aboriginal speakers from the State in which the conference is held. We have a sense of pride in our fellow Aboriginal community in different states and I think that was acknowledged this morning when we were formally invited by the Nungas. If we are asked here formally by another group from this area it is good. We like that because in our customs we do not like to travel on anybody's territory unless we are asked to be there. We would like to address the issue of speakers from the States being invited to speak and also Aboriginal speakers in an opening address.

We would like to see much greater training of police in Aboriginal culture and history by local Aboriginal community based organisations. Australians should acknowledge Aboriginal history and design programs appropriately. By this reasoning if you actually design a program that is totally European based, or French based, or American based it is not going to work. We have actually got to acknowledge our history, and not push it aside and say "We've only got one history". For most people here when we go to school we hear about Captain Cook discovering Australia, but do we actually know which tribal group actually watched Captain Cook fix his boat? It was Kukuimirdi. That was one of my grandmother's tribes. But, people do not

realise, they do not acknowledge or do not even know anything about that history.

We have to come together to design good education programs; I think it should be a joint thing. You have to work together. We cannot keep working apart all the time because the system is not going to work.

Cyndia Henty-Roberts

I WILL TELL YOU THE STORY OF MY NAME. HENTY DERIVES FROM Portland, Victoria. I am a descendant of those famous Hentys and quite proud of it. Roberts is a name that my father acquired. He was one of those children who were taken away and put on Croker Island. It was a name given by one of the missionaries, Rupert Kentish. My father arrived on Croker Island and he looked up at this very tall man and the gentleman looked down at him and said "What's your name son?" My dad said "Ronald Pierce from Alice". My dad was shaking in his boots; he was only a four-year-old lad, but he can still remember. Mr Kentish said to Sister Margaret Somerville, "Margaret, Ronald Pierce doesn't sound like a very strong name for a young lad. What say we give him the surname of that black mythologist who was on our island?" He was our first and only black mythologist we had in the Northern Territory. That is how my father acquired the name Roberts which he passed on to me. I have actually taken on the name Henty from my mother's side and Roberts from my father.

I am a social worker and I coordinate three services, one is the Aboriginal Women's Shelter in Darwin, the other is the Aboriginal and Islander Women's Health Service, and the third one is the newly established Aboriginal and Torres Strait Islander Youth Shelter.

I am not a radical person. I guess I have and always have had this great mentor in life who was Martin Luther King. As you all know Martin Luther King had this wonderful dream that all people would come together and be as one. My dream when I look at everyone here is that I came for something and I know that I am going to take back to Darwin something: the ideas that I have heard at this conference, the ideas and opinions from people whom I have met, and the wonderful chance of meeting a gentleman, Judge Michael Brown, because he brings with him here information on the family group conference. I must also mention your name, the gentleman who brings the Wagga Wagga program (Senior Sergeant Terry O'Connell). I hope to take the bits and pieces from both of those programs.

I guess the message is that Aboriginal and Islander people do have a lot of problems, but I do not think that we can fix them alone. We ourselves need to come together as people. I am sometimes known as a coconut in my own community because I dress the way I do and I do not give a damn. I am also known by our own menfolk in some communities as the black Germaine Greer. I do not mind, because I definitely have a very thick back. All you wonderful people, whether you are black, brown, red or white, are here for the same reasons I am. You all want to make sure there is a vision for the future of the youth of today, that we can take back to our communities. But I would love to see more Aboriginal speakers and more people from the Torres Strait Islanders being invited to speak about visions for the future.

Before I close I would just like to say that you all get angry, I know, when you see different people hop up here and we are not invited to speak: "here they go again", you say. But I guess here we have that little bit of opportunity that people can speak and have their say.

Terry O'Connell

IT IS DIFFICULT WITHIN MY ALLOCATED TIME TO COMMENT UPON ALL OF the issues raised by earlier speakers, so I will speak to those concerns directed at the Wagga Wagga model, and in particular, the role of the police in that process.

It seems that Danny Sandor's fixation about police having too much power overall relates to the question of discretion. Danny's interpretation of the Wagga Wagga model is that effective court diversion by police equates to excessive use of police power. This is a misunderstanding. What I have been advocating is a system in which, for the first time, police have been provided with a system which makes sense of why police should use alternatives to court when processing offenders.

As critical players in the criminal justice system, police have, to date, relied most exclusively upon courts for dealing with offenders. This process excluded victims. Everyone here agrees that this legalist approach has failed. The alternative is to develop a diversionary process which includes offenders, offenders' families, victims, victims' families and other significant people. All of these people assist constructively with repairing the damage caused by crime, minimising the associated harm and providing the support and guidance needed. Many of the self-appointed defenders of young people see such approaches as a power grab by police.

The key aspects of the Wagga Wagga model that need to be understood are:

- that it defines community as being those people directly affected by the crime, and therefore they have legitimacy in the process;
- it recognises family and significant members of the offender's community as the people who can contribute most towards assisting the young offender to deal with the consequences of crime;
- it provides a forum for victims to be recognised and to contribute constructively to the reintegration of offenders;
- it has the potential genuinely to redefine policing in a constructive way.

Whilst John Murray mentioned some of the barriers that police themselves present to young people, he failed to talk about policing in a wider context, as a complex and difficult industry; an industry that is often overscrutinised and regulated by the public, the media and other watchdogs. In recent times, this excessive scrutiny has worked directly against the interests both of police and of the communities in which they work. It has tended to lock police into the narrow, reactive enforcement role and this further exacerbates the very problems we have been attempting to address during this conference.

The answer to juvenile crime is to be found in those communities who are prepared to participate in a process which focuses upon repairing harm; assists individual offenders accept responsibility for their actions; and which allows family and other members of the community to become more accountable for young people involved in crime.

It is important that we stop relying upon the State officials or complex legislation to provide all the answers to what are essentially community problems. These problems can best be resolved by those directly affected within those communities. We need to reject models which focus upon the individual, or those models which rely upon punishment as the only response to crime. We need models which reduce the net of state control and increase nets of community control. In these times of economic and social uncertainties, the approach to juvenile crime used by police in Wagga Wagga offers an appropriate and humane way of achieving this aim.

Ian O'Connor

AS THE TIME IS SHORT I WILL SIMPLY HIGHLIGHT THE MAJOR POINTS THAT we need to address in developing juvenile justice policy and practice in Australia. My first point is that juvenile justice policy must be located in the broader context of youth policy. In developing responses to the causes and consequences of crime, we must address the many areas of disadvantage that many young people actually face in their daily lives.

The second point is that any system that we construct must be based on a respect for the rights of young people. Processes such as victim offender reconciliation, family group conferences and so on are concerned with restoring to full citizenship both the young offender and the victim. In our society very limited citizenship rights are afforded to young people. If we want young people to respect the rights of others, we have to start by respecting their rights.

My third point is that the processes developed should be based on the participation of young people. Most of the discussions that we've had over the past few days have been in terms of doing things to or for young people.

My fourth point is in relation to education. We are continually confronted in the media and elsewhere with misinformation on the nature and extent of juvenile crime. We should actively be providing alternative information to the community. Additionally, persons who are working with young people, including police, need to be educated about the nature and extent of that crime. It should be good news for the police that most young people apprehended once do not re-offend, and yet there is a widespread attitude from the police that most young people are young "crims" who get away with too much, and re-offend.

My fifth point is that it is time to actually start agitating to raise the age of entry into the court system. In most states it is currently ten years. Very few young people of eleven or twelve or thirteen appear in court. By raising the age of first appearance we force the development of alternative methods of responding to offending behaviour. My final point is that there is no bright new future for juvenile justice until the over-representation of Aboriginal and Torres Strait Islander children is remedied.

Michael Hogan

MY JOB IS TO DO THE EXOTICALLY LABELLED BUT EXCEEDINGLY DIFFICULT task of being rapporteur of the conference. It is easy not to do justice to all the contributors to a conference as large and diverse as this. We have had something like thirty-six speakers and twenty-four workshops and countless contributions from the floor and at workshops and so on. Goodness knows how many words have been uttered, how many trees have been sacrificed. We now have the opportunity to go away and try and absorb and work through the sorts of things we have heard and thought about in the last few days.

I have been trying to think of a witty title for the summing up. Normally I am not an extravagant person like Ralph Bleechmore, but I think I have got something almost as obscure as Ralph as my subtitle and it recalls the exchange between Judge Brown and Terry O'Connell, I think it was. It is a poor attempt, but it is my only chance of glory: "To go or not to go to Wagga Wagga!".

I was contemplating going through and summarising the key messages of all the main speakers, but I think there have probably been enough speakers and enough of being spoken to. I guess I can try to draw out a few of the key themes and I will start by going back to the opening of the conference. We should welcome the fact that Senator Tate, the Federal Minister for Justice, opened the conference—A National Juvenile Justice Conference—and that, very importantly he referred to the Commonwealth's initiatives regarding the impact on the relationship of justice, violence and parenting skills and so on. I was also pleased to hear him mention the recent retrograde juvenile justice legislation in WA. I was a little disappointed, however, that there was not any news from the Commonwealth about what they might do to help us create a national approach to juvenile justice, making national efforts so that we can learn lessons from each other, and plan and coordinate initiatives.

One of the key things which came through in the conference was the problem of the politics of juvenile justice. Chris Sumner alluded to it when he talked about the difficulties of coordinating agency roles and tasks faced by the South Australian Select Committee. We heard from Hal Jackson, of the very sordid history of public debate and the role the media played in WA, in creating the opportunity and the environment for the West Australian government to enact legislation such as it did. There is a challenge in this for all of us. It reinforces what was said by another speaker about mobilising the community at local, state and national levels to try and stop the environment coming about where governments can enact that type of legislation.

Chris Sumner also referred to the social and economic context of juvenile crime and juvenile justice. Again, that was a very important theme in this gathering. Ken Polk alluded to the need for a new agenda for children and he talked about economic justice and about what needs to be done to ensure

their future. We do not have in Australia a national agenda for children and young people. We make decisions all the time about economic and social policy that impacts on children and on their families. We have got to start to get our politicians and our policy makers to think about how their decisions too often have consequences that manifest themselves as juvenile crime. It is high time a national agenda for children and young people was put forward.

John Braithwaite mentioned a few ideas and what he offered was a very exciting and constructive way out of a sterile, and I think very constraining, debate about justice versus welfare. One particular comment that struck me about his discussion on reintegrative shaming was the opportunity it allowed for morality, that people in communities, parents and families can find their own way of making justice. A lot of qualifications have been stated and concerns have been expressed, yet I cannot see a better opportunity than this for handing over power and handing over resources to families and peer groups and to making ourselves redundant.

Mick Brown gave us, as well as a couple of backhanders for John Braithwaite, an insight into New Zealand legislation and practice. One of the most poignant and telling things that he had to say was the Maori phrase he opened with, and I certainly cannot do justice to the way he said it, but it is something that I will always recall, that was "the most important thing is people, it is people, it is people". What we need to do is to ensure that our juvenile justice systems are people orientated. A most important development at this conference was the beginnings of a much more concerted effort and much clearer thinking about that. That is the challenge. We have got to make it child-focussed, centred on their rights, their situations, their needs.

We also had considerable discussion of various programs, legislation in Queensland and so on and we considered what could be done on a local level. We need to balance what I said about a national agenda with picking up on the lessons of what Terry O'Connell and others said can be achieved on the local level. We must look for practices and opportunities that constitute best practice, that is, for what good policing, good courts, good institutions can offer young people, families and communities.

I want to finish with a summary of my key themes, key lessons from this conference, and with some key words. The first ones were "responsiveness" and "respect". This relates to what I was saying about juvenile justice being child-centred and child-focussed. Secondly there is "participation". We should know all about the need for equal participation of young people in families and our communities. It is a clear injunction of the UN convention of the rights of the child that we structure our decision making processes to ensure participation. A lot more needs to be done. Thirdly, there is "re-integration". I think the language of re-integration of young people is very positive. We should not stop there. There is also the question of re-integration of the police, of courts, of institutions into the community. Likewise with "accountability". Again it's been said that we ought not to stop at holding young people accountable but to pick up what John Seymour was talking about, address the question of who are making the decisions and how these people are to be held accountable. Again, it would be much better if the

courts were making officials and service providers accountable for what happens to young people.

Fifthly, I want to mention "information". Again and again we have heard the message, unless we have an informed public and informed young people, families and decision makers, we are not going to achieve good practice. We need to head off the sorts of developments we have seen in WA and which are threatened elsewhere by getting out information, and getting it out again and again, about what really is going on with juvenile justice, what really is going on in the streets and what really is going on in terms of juvenile crime.

Finally, I will just come back to the issue of national efforts. Obviously the benefits of a conference like this are that we can share ideas, learn lessons, hear people talk and so on. I think I feel a little bit like the young people who go to "Insearch" programs might feel like—you get wound up in a conference and you go back home to the harsh reality. I think we ought to go away from this conference with a commitment to try to put in place its lessons, its networks and its opportunities. We must work together to find ways of moving forward. The real challenge is to look for what the best policy is and the best practice should be. The agenda for the next conference might be "What Works".