



# “Court in the Act”

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

*A newsletter co-ordinated by the Principal Youth Court Judge for the  
Youth Justice community.*

*Contributions, feedback and letters to the Editor are not only acceptable, but are  
encouraged.*

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**Youth Court Website:** <http://www.courts.govt.nz/youth/>  
*(Now includes a database of reported and unreported Youth Court cases)*

**No.20, December 2005**

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“Blessed is the season that engages the whole world in a conspiracy of love.”

**Hamilton Wright Mabi**

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***"Court in the Act"  
Christmas edition***

*Principal Youth Court Judge A J Becroft*

CHRISTMAS at last and hopefully a chance for a well-earned rest for all those working so hard in the youth justice field. It's a taxing area to work in but in this edition we've tried to focus on the brighter side of life in youth justice with a few good news stories. For example, Sarah's story and the essay by a Napier teen trying to turn her life around after a drink-driving charge.

And – although it is dangerous to single out individuals as there are so many who make outstanding and dedicated contributions to youth justice – we feature Rick Wiringi and Senior Constable Trevor Smith, who have worked tirelessly to help young people.

Unfortunately, it's not all good news this time around – Robert Ludbrook highlights some difficulties with grievance procedures in CYFS residences.

"Court in the Act" aims to deal with current issues, relevant cases, and important overseas developments in youth justice. As there is no other youth justice publication in New Zealand, "Court In The Act" is a foretaste of what I hope will be a more organised and regular publication in the future.

Until that regular publication arrives, my office will act as a "clearing house" for all matters of interest regarding youth justice. I am happy to send out any items of national interest that people want to send me. We have also collated a significant database of those receiving "Court In The Act". If you know of others who should be on the list please contact my PA, Lavina Monteiro, ph. (04) 914 3446.

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***1. Guest Article:  
Children in CYFS  
Residences  
Robert Ludbrook***

### ***Grievance Procedures and Residential Advocates***

*Robert Ludbrook, Legal and Policy Consultant*

CHILDREN in institutional care are the most vulnerable of all children. They are separated from home and family, cared for by strangers in an impersonal setting and have restricted contact with family, friends and the outside world. This is recognised Article 37 of the Convention on the Rights of the Child (UNCROC) which states that:

"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age."

The Department of Child, Youth and Family Services operates seven residential institutions in New Zealand, four of which (South Auckland, Wellington, Christchurch and Dunedin) accommodate children (ie persons under 17 years) in need of care and protection and three of which (South Auckland, Palmerston North and Christchurch) provide accommodation for young people involved in the youth justice system.

The Committee on the Rights of the Child has taken the view that UNCROC requires that children in institutional care should have access to a complaints procedure: *General Discussion on the Administration of Juvenile Justice, October 1995*. The *UN Rules for the Protection of Juveniles Deprived of their Liberty* state that “Efforts should be made to establish an independent office to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements”: Rule 77.

### **Regulations establishing Grievance Procedures for CYFS Residences**

Under the Children, Young Persons and their Families (Residential Care) Regulations 1996, each of the seven Child, Youth and Family residences must have a grievance procedure in place for children and young people who wish to complain about any aspect of their care or treatment. (reg 15). Complaints are first dealt with by the manager of the residence. A resident who is dissatisfied with the manner in which a complaint has been dealt with can seek a review by a three member grievance panel (Reg 31). Residents are able to have an advocate to support them in formulating and presenting their complaint (Reg 17). Grievance Panels must monitor compliance by the residence with its grievance procedure. Panels are required to make quarterly reports to the Chief Executive of Child, Youth and Family, the Children’s Commissioner and the Principal Youth and Family Court Judges.

### **Failings in the grievance panel system**

It is common ground that the grievance procedures have not operated effectively. Grievance panel members were usually nominated by the manager of the residence

and relied on information provided to them by the manager and staff.

Annual Compliance Audit Reports prepared by Child, Youth and Family auditors have regularly thrown up concerns about grievance procedures. The 2002 report highlighted grievance procedures as a “critical area”. In that year, only one residence was rated as better than adequate in ensuring that residents have information about grievance procedures. There was little or no improvement in 2003 where compliance in three of the five residences was adjudged less than satisfactory and the risk was assessed as “high”. The Audit report comments that “A high level of integrity and transparency of the Grievance Procedure is necessary if the stakeholders and the young people are to have confidence and trust in the process”.

### **Compliance Report Findings on Grievance Procedures**

In 2003 it was found that grievance procedures were not operating at all in one residence and that grievance panels were not always completing quarterly reports as required by the Regulations. Problems with grievance procedures identified in the 2004 report included:

- Procedures and degrees of compliance vary between residences.
- Correct records are not kept, making it impossible to assess degree of compliance in one residence.
- No residence has clear procedures by which residents can be provided with an advocate to support them with grievances despite the requirements of the Regulations.
- Seven weeks delay in the investigation of a serious complaint in one residence.

Concerns about the failure of grievance procedures have been voiced regularly over the last decade.

### **Children and Youth Aotearoa: March 2003**

New Zealand’s second Non-Government Organisation report to the United Nations Committee on the Rights of the Child (March

2003) prepared by ACYA (“Action for Children and Youth Aotearoa”) recommended that:

“The Human Rights Commission conduct an inquiry into treatment of children in Child, Youth and Family Residences focussing particularly on searching, placement in secure care, effectiveness of grievance procedures and unnecessary restrictions on the liberty of children” (p28).

### ***Human Rights Commission Action Plan for Human Rights (2004, 2005)***

The Human Rights Commission looked at this issue as part of its task of developing a comprehensive *New Zealand Action Plan for Human Rights*. (NZAPHR) In its report *Human Rights in New Zealand Today* the Commission concluded that: “There are reasonably strong indications that practice in CYFS residences is not matching the standards in legislation and other guidelines (p212). In its *New Zealand Action Plan for Human Rights*, the Commission expressed concern about the ineffectiveness of grievance procedures in CYFS residences and identified as a key priority for action the need to “Develop effective grievance procedures so that complaints by children and young people in residential care and other placements arranged by CYFS will be responded to promptly and effectively”.

In response to pressure from ACYA, Youth Law and others, Child, Youth and Family commissioned an independent consultant’s report on grievance procedures for children and young persons in the Department’s residences. The report by Antoinette Hindle (the *Hindle Report*) was released in July 2004.

### ***Hindle Report***

*The Hindle Report* was critical of the present grievance procedure system and grievance panels and found the system flawed and ineffective. Hindle commented:

“I am ... satisfied ... that the grievance procedures as they currently operate within residences are not effective. This is because there is considerable confusion about the fundamental purpose that the grievance procedures are supposed to serve, and the role that grievance panel members are meant to play”: para 1

“It is important to bear in mind that:

- Many of the complaints are trivial
- Serious instances of abuse have almost never come to light through the grievance process:” para 5.

“It seems little wonder to me then that residents told me over and over that there was no point in using the procedures because no one would believe them, and adults always preferred the word of other adults to their own”: para 5.6.

“Panellists cannot be independent investigators and confidantes and support people for the residents at the same time. The regulations already provide for advocates and these should be made readily available. It is (the advocates) who should be visiting the residences and sharing meals with the residents”: para 5.7

“*A Voice for Residents*: A number of adults I have spoken to identify this as one of the primary reasons for having grievance procedures. It provides a safety valve: a mechanism for young people to have their say. A way to make sure they are being heard. ...The only problem is that it doesn’t. Almost uniformly, all of the residents I spoke to told me that the grievance procedures were ineffective, a waste of time, inappropriate and unhelpful”: para 6.1.

“With the exception of one residence there is no one whose specific job is to support complainants or explain the process as it unfolds. Given that there is already provision in the regulations for the appointment of advocates I think that someone in that role ought to make a significant difference to a resident’s experience of the procedures and their perception of them. ... I think that having someone in the role of advocate who could support residents through a complaint and provide them with meaningful information about the process would make a significant difference”. Paras 6.1.2, 6.1.3.

“These regulations were enacted eight years ago. During that time there have unfortunately been several instances where serious disciplinary action has been taken by the Department in relation to individual members of staff, including dismissals because of misconduct and unprofessional practice towards children and young people: 6.2..... (F)ew of these instances have come to light through the grievance

procedures – residents are clearly not using these procedures to identify any issues of safety”: para 6.2.

“There was a unanimous conviction that the presence of an external third party in residences, there at random and by right was extremely important. At present this is the role the (grievance) panel plays”.

“*Residential advocates.* An advocate should be appointed for each residence, being someone who is able to visit at random and by right and who expects to visit frequently (ie *at least* once a week) and who is always available ...Their role would remain firmly for the resident while the panel would investigate properly, independently’... For practical reasons I do not believe the residents’ youth advocates or counsel for child are well suited for this sort of role”: para 7.1.1

“A number of people I spoke to questioned whether the model that operates in NZ is the best way of protecting children and young people in residential care, or of giving them an effective voice in their own care and management. I agree with the reservations that have been expressed and note that the (current) system seems to be very cumbersome. I can not help but wonder how much better off residents might be if we exchanged the cost and logistics of managing three lay people per residence (and possibly four if we include a residential advocate) for one Official Visitor per residence with a depth of knowledge and experience’: ... I am also struck by the fact that the current system has the Department appointing, training, managing and paying the very people who are supposed to be doing a job that is predicated on their complete independence from it”: para 8’.

Hindle proposed that a working group be set up to “clarify some of the finer details”: para 7.2.4. She envisaged that the working group should consist of representatives of key groups involved, including ideally some of the residents and the Commissioner for Children in an advisory capacity: para 5.8.

### ***Child, Youth and Family Performance Improvement Plan September 2004***

The Department responded promptly to the Hindle Report. In September 2004 a

*Performance Improvement Plan* was drawn up setting specific time frames for proposed actions which included:

- A working group to be established by November 2004 to revise procedures within the existing framework and to report by June 2005.
- A pilot scheme of “residence advocate” to be developed for Youth Justice North to commence in March 2005.
- A report on progress to date and proposals in relation to need for future legislative change to be filed by June 2005.

### ***First Progress report 25 August 2005***

After some prompting, the Department prepared a progress report dated 25 August 2005. This indicates that the residential advocate proposal had been delayed due to “more pressing issues”.

### ***Second Progress Report 16 November 1955***

A further progress report was prepared for a meeting between Departmental officials and the Children’s Commissioner and the Principal Judges of the Family Court and the Youth Court. This report summarises progress to date showing that improvements have been made in the appointment of grievance panel members and in the provision of quarterly reports. However, there is no indication of progress on the major Hindle proposal of residential advocates. This report states that the Department is undertaking a literature review on international advocacy models and is arranging for comparative research to be carried out on similar regulatory frameworks.

### ***Conclusions***

A pilot “residence advocate” scheme was to be developed for Youth Justice North to commence in March 2005. This has not happened and there is no indication of progress being made towards the establishment of residence advocates as recommended in the *Hindle Report*.

YouthLaw, a community law centre specialising in youth issues, offered in March

2003 to provide advocates for each residence without cost to the Department. The offer has been repeated several times since then but nearly three years later no response has been received from the Department.

Although a Working Group has been set up as recommended by Hindle, it has no external representatives. The Working Group has failed to set up a “pilot residence advocate scheme” at Youth Justice North although the Performance Improvement Plan indicated that this would be in place by March 2005. It is of concern that the Working Group appears not to have even begun to work through the details of a residence advocate scheme eight months after the Pilot Scheme was to be in place.

The November 2005 progress report states that an examination of advocacy services generally for children and young people is about to be undertaken and that research is to be commissioned into equivalent regulatory frameworks. Fifteen months after the *Hindle Report* advised that current grievance procedures are ineffective and that residents have no confidence in them it is disappointing that the Department is focusing on carrying out further research into advocacy and regulatory frameworks.

It has not been made clear whether the lack of progress is a result of administrative inertia or a reluctance on the part of residential care staff to have an outsider scrutinise their actions and advocate for residents.

The Children’s Commissioner and the Principal Judges of the Family Court and Youth Court have expressed their concern at the delay and will be monitoring the situation. In the meantime, children in Child, Youth and Family residences continue to operate with a flawed grievance procedure. This not only places residents at risk: it opens the Department to the risk of civil actions being brought against them by residents or former residents.

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## **2. A Star from the East! Rick Wiringi**

Principal Youth Court Judge A J Becroft

LATE in November Rick Wiringi, who runs Eastside Training Ltd, came to see me. Eastside is a private training establishment registered with the New Zealand Qualifications Authority providing vocational training in forestry and life skills necessary to meet the requirements of the highly demanding forestry industry. Upon completion of the programme all the young people are assisted to find final employment. There are up to 40 at risk young people, both offenders and potential offenders, on the programme at any one time. Around 85% of the 500 or so who have been through the training programme are still in full-time employment.

This is an outstanding example of the dedication and commitment of one man. Ten years ago Rick, who was then in full-time employment within the forestry industry, had the vision of providing training for “lost”, difficult and at risk young teenage boys. For two years his programme operated unofficially, financed by the first and second mortgage he took out on his own home. It is now recognised by the Tertiary Education Commission and Rick is a CYFS approved caregiver. The programme lasts for four months and has been extraordinarily successful.

Even more exciting is the recent news that Rick wants to introduce a residential component to his programme for up to 8 young males who can remain in a residential setting, under his supervision, while they are attending the course. In the Rotorua/Bay of Plenty area it would provide a location for Supervision with Activity sentences which nationally are being recommended less and less. The programme may also be able to take some young offenders who might otherwise be remanded in police cells.

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## **3. Spotlight on Parenting: “SKIP” a New Zealand Initiative**

By Gael Surgenor, Project Manager, “SKIP”,  
Ministry of Social Development

THE RESPONSIBILITIES and challenges of parenting are well discussed in the youth sector, with poor parent/child relationships

identified in research as high risk factors for offending.

SKIP (Strategies with Kids: Information for Parents) is a programme designed to support parents to raise their children using love, nurture, limits and boundaries. It has a very clear key message that effective discipline does not include smacking or hitting. It is aimed at parents and caregivers of under fives and was launched in May 2004.

The programme, which is part of the Ministry of Social Development's Family and Community Services, has a three-pronged approach: a local initiative fund, capacity building and resource development. It is based on the philosophy that communities know their local needs best, and should be supported to find solutions to community issues.

The local initiatives fund has over 90 projects running throughout New Zealand. These cover a huge range, including community-wide activities promoting positive parenting, a promotion of a smack-free town, the establishment of support groups, parent expos, marae-based programmes and Pacific fono.

The capacity building strand involves building partnerships with national organisations to increase capacity to support positive parenting, and the development of a national training network. So far 60 trainers have attended a three-day workshop and in turn gone back to their communities and trained a further 600 or so people working with parents. Partnerships and collaborations are being developed with organisations including Plunket, Barnardos, Parent to Parent, the Kohanga Reo Trust, Parents Centre and Playcentre.

Resources have been developed for parents, including a set of nine core pamphlets which cover hotspots such as the supermarket, tantrums, sibling rivalry and safety. These are free and so far around 1.5 million have been distributed.

SKIP promotes six principles of effective discipline: love and nurture, limits and boundaries, guidance and understanding, talking and listening, consistency and consequences, and structure and security. These are woven through resources and training and are being translated into many settings.

Core elements of the SKIP training packages also include conscious parenting, which encourages parents to think about their own upbringing, their parenting style and the childhood they want their children to have. For many parents this small exercise is very revealing as they realise they are automatically parenting the way they were parented.

More information on SKIP is available from [www.familyservices.govt.nz/skip/](http://www.familyservices.govt.nz/skip/) or through Gael Surgenor at the Ministry of Social Development (04) 916 3300.

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#### **4. How the Youth Justice System Works: Sarah's story**

*This article is reproduced from Child, Youth and Family's magazine, "Awhi Mai, Awhi Atu". A wide range of people involved in youth justice contributed to the article which was co-ordinated by Rhiannon Symmons, Senior Communications Adviser - Youth Justice at Child, Youth and Family. Rhiannon is always keen to receive details of positive stories about the valuable work being done in the youth justice sector, please feel free to contact her on [rhiannon.symmons001@cyf.govt.nz](mailto:rhiannon.symmons001@cyf.govt.nz).*

LAST YEAR Sarah\*, then 16 years old, was arrested and charged with aggravated robbery. She faced prison and a criminal record. But today, thanks to Sarah's efforts and the hard work of those who supported her, Sarah now faces a bright future and is living offence-free in the community.

We talked to a number of those involved in this youth justice good news story to get their take on their roles in the process:

Paul Hapeta, Youth Justice Coordinator with Child, Youth and Family says the youth justice system aims to hold young people accountable while also helping them avoid re-offending.

"Evidence shows that once young people have a criminal record they are much more likely to re-offend and have poor life outcomes. Sarah is a very intelligent, resourceful young woman – she could be or do whatever she set her mind on and we wanted to help make sure she

got the chance to do that, while still being accountable for her actions,” explains Paul.

Sgt Greg Clarke is a Police Youth Aid officer in the region Sarah is from. He says Sarah was a first time offender who wasn't well known to Police Youth Aid before she faced the serious charge of aggravated robbery.

After being arrested by Police Youth Aid, the Youth Court appointed a Youth Advocate to represent Sarah. James Johnston was appointed as her advocate, he explains his role in the process:

“Youth Advocates are appointed by the Youth Court to represent young persons appearing before the Court. Youth Advocates ensure that due process is followed and are a check and balance on the youth justice system.

“A key part of that role is also to ensure that the interests of our clients, those most vulnerable participants in our criminal justice system (young persons) are protected. We must also ensure that they understand what is happening. The role includes a combination of advising in relation to the legal aspects of the particular case and also in relation to the process itself.”

The Youth Court ordered a Family Group Conference for Sarah, her family, her victim and the various agencies involved. Sarah says the Family Group Conference (“FGC”) was one of the hardest experiences of her life.

She confided: “The Family Group Conference was really hard, it was the first time I'd been through something like that. Before going to the conference I felt stuck, like I couldn't see the way forward.

“One of my victims came to the conference. Seeing her was heart-pounding, I was really tense. I gave written apologies to my victims and a verbal apology to the one who attended the conference. For me, the verbal apology was the hardest thing ever. I didn't want to do it but I knew I needed to, that it was the right thing to do. After the FGC we shook hands, that was pretty great.”

And of the recommendations the FGC came up with Sarah said:

“The recommendations were there for me to show I was remorseful, to be accountable for what I'd done. They were really hard! I had to follow my bail conditions and go to

counselling. I had to go live in another place and I had to pay reparation for the damage I'd done.

“Going away was really hard, I missed my family and home. But I felt really lucky with the people I went to stay with, they made me feel safe and welcomed. It was a hard thing but a good idea, it gave me time to think.”

Youth Justice Coordinator Paul Hapeta organised the FGC for Sarah, her family, victims and the agencies involved. He says Sarah's FGC was an example of why FGCs work for young people.

“Sarah's family was prepared to hold her accountable for her offending, and to support her to not re-offend. Her family's commitment made all the difference to the outcomes for Sarah.

“At the conference Sarah, her family, her victim and the agencies agreed to a plan for Sarah. The plan was not an easy ride for her but she stuck to it.”

Greg, James and Paul all emphasize how important cooperation between the various agencies is in supporting young people to be accountable for their offending and to live law-abiding lives.

“Sarah's case is an example of the youth justice system doing what it is designed to do,” says Greg. “Sarah was held accountable but was also given a chance.

“Youth Aid sees itself as part of the youth justice team, it's about getting the right outcome for everyone – the victim, the young person, the family. The only way we can achieve this is by all the agencies working together.”

Sarah was given several months to carry out the FGC recommendations and was monitored by the Youth Court during that time. After several months Sarah appeared in the Youth Court for all the matters to be determined.

Youth Advocate, James Johnston explains: “The last appearance was very emotional. The outcome still needed to be determined and was not guaranteed. After detailed questioning by the Presiding Judge and confirmation that all matters had been completed the Police consented to a discharge.



“After the discharge was granted and Sarah was free to go, she took the opportunity to personally thank her family, those who had assisted her, and in particular, the Youth Aid officer and the Presiding Judge. This included a handshake for the Judge.”

Principal Youth Court Judge Becroft was the Presiding Judge and he acknowledged the enormous effort put in by Sarah’s family and the youth justice agencies involved. He also commented on the commitment shown by Sarah to follow her FGC plan to the letter.

Judge Becroft stressed that this was just the beginning for Sarah, not the end, and that the foundations had been laid for her to go on successfully.

James says Sarah’s particular case was one of many successes of the youth justice system. “Regrettably it is only the high profile failures that seem to make it into the news media. The outcome for this young person was the right outcome, and, without doubt, a successful outcome.

\*Sarah’s name has been changed for the purposes of this story.

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### **5. One Intensive Probation Programme in U.S. Ineffective for Young Offenders**

A CALIFORNIA study of 12 to 18 year old offenders showed that an intensive juvenile probation program had no impact on recidivism (cf. Lane, Jodi, Susan Turner, Terry Fain, and Amber Sehgal (2005) *Evaluating an Experimental Intensive Juvenile Probation Program: Supervision and Official Outcomes. Crime and Delinquency, 51(1), 26-52*).

Youths receiving the “standard” treatment received an average of 6.2 minutes of contact with service providers per month, compared to 6 hours and 11 minutes of contact per month for those on the intensive probation programme. Around 18 months later 59% of the “intensive” group and 58% of the “standard” group had re-offended.

The authors of the report note that it is possible that those in the “intensive” group were not high enough risk to benefit from a high intensity intervention and conclude that providing services does not guarantee that these services will be effective.

A salutary warning to all those involved in youth justice: delivery of programmes is one thing but ensuring their effectiveness is quite another.

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### **6. Senior Youth Aid Officer Retires**

*By Rhonda Thompson, Research Counsel to Principal Youth Court Judge*

SENIOR Constable Trevor Smith has retired from the helm of the New Plymouth Youth Aid section after 30 years in the Police - 18 years of those in Youth Aid. Constable Smith has seen huge changes in youth justice in his time on the force – not least those springing from the Children, Young Persons and Their Families Act 1989.

Prior to the CYPF Act Youth Aid officers looked after the “up and coming” youth offenders and had little legal authority. But since the passing of the CYPF Act, statutory protections for young people during investigation, arrest and interview have become a focus for police. Another change noticed by Constable Smith is that prior to the CYPF Act the outcome for the young offender was down to one Judge – now the Family Group Conference process allows lots of parties, including Youth Advocates, social workers, the victim, the young person and their family to have an involvement.

Constable Smith is a great believer in getting effective Supervision with Activity programmes off the ground. The strength of these is their ability to run for a longer period of time than Supervision with Residence orders.

Constable Smith argues: “A lot of these kids have problems from care and protection issues and you’re not going to change them in a month or two.”

Judge Becroft praised Constable Smith's outstanding contribution to youth justice. "Constable Smith is very knowledgeable in the CYPF Act, is greatly respected by all those involved in the Taranaki youth justice community and has a wonderful rapport with offenders. His work is an example of the very high quality contribution that is made by Police Youth Aid officers up and down the country."

As to the future, Constable Smith laughs at the suggestion he might now devote himself to his garden.

"I've always had a passion for working with young offenders and that will always be a part of me," he said, adding that he may even work in the youth justice field again in the future.

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## **7. Early Notification System Reduces Truancy**

*By Paul Seiler, Project Manager, Student Management Systems, Ministry of Education*

THOSE involved in youth offending will know of the clear association between non-attendance at school/truancy and criminal offending. While not all truants offend, almost all youth offenders (80%) are truants or not enrolled at secondary school.

Principal Youth Court Judge Judge Becroft stresses: "Keeping young people at secondary school, especially our most disadvantaged and difficult, is an enormous task that will have significant positive downstream effects."

In early 2005, the Ministry of Education piloted a system enabling schools to automatically alert parents of children who are absent without explanation.

Called the "Early Notification System", it uses a range of technologies including text and voice-messaging as well as email to help schools follow-up absent children at the push of a button.

Most participating schools have reported a definite and immediate drop in truancy with parents' greater awareness of the problem and students realising they're likely to be found out. In many cases parents had had no idea that their children were not at school.

For schools, the system has saved hours of manual follow-up time and some schools have reported that parents have become more proactive in advising them when students will be absent and why.

Pilot results have now been rolled out to vendors of student management systems so that more schools can benefit from the technology and the project itself was recognized in the TUANZ Innovation Awards with it winning the *TUANZ Local and Central Government Services Award 2005*.

The project was also a finalist in the Computerworld Excellence Awards in the *Excellence in the Use of IT in a Community Project* and in the *Excellence in the Use of IT in Government* categories.

To learn more about how this initiative works either call the Student Management Systems Project at the Ministry of Education on 04 463 7666 or email [sms.project@minedu.govt.nz](mailto:sms.project@minedu.govt.nz)

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## **8. FEATURE ARTICLE: Jailed for Life After Crimes as Teenagers: A US Perspective to Challenge NZ**

*Adam Liptak, New York Times 3/10/05*

OCALA, Fla. - About 9,700 American prisoners are serving life sentences for crimes they committed before they could vote, serve on a jury or gamble in a casino - in short, before they turned 18. More than a fifth have no chance for parole.

Juvenile criminals are serving life terms in at least 48 states, according to a survey by *The New York Times*, and their numbers have increased sharply over the past decade.

Rebecca Falcon is one of them.

Ms. Falcon, now 23, is living out her days at the Lowell Correctional Institution here. But eight years ago, she was a reckless teenager and running with a thuggish crowd when one night she got drunk on bourbon and ruined her life.

Ms. Falcon faults her choice of friends. "I tried cheerleaders, heavy metal people, a little bit of

country and, you know, it never felt right," Ms. Falcon said. "I started listening to rap music and wearing my pants baggy. I was like a magnet for the wrong crowd."

In November 1997 she hailed a cab with an 18-year-old friend named Clifton Gilchrist. He had a gun, and within minutes, the cab driver was shot in the head. The driver, Richard Todd Phillips, 25, took several days to die. Each of the teenagers later said the other had done the shooting.

Ms. Falcon's jury found her guilty of murder, though it never did sort out precisely what happened that night, its foreman said. It was enough that she was there. "It broke my heart," said Steven Sharp, the foreman. "As tough as it is, based on the crime, I think it's appropriate. It's terrible to put a 15-year-old behind bars forever."

The United States is one of only a handful of countries that does that. Life without parole, the most severe form of life sentence, is theoretically available for juvenile criminals in about a dozen countries. But a report to be issued on Oct. 12 by Human Rights Watch and Amnesty International found juveniles serving such sentences in only three others. Israel has seven, South Africa has four and Tanzania has one.

By contrast, the report counted some 2,200 people in the United States serving life without parole for crimes they committed before turning 18. More than 350 of them were 15 or younger, according to the report.

The Supreme Court's decision earlier this year to ban the juvenile death penalty, which took into account international attitudes about crime and punishment, has convinced prosecutors and activists that the next legal battleground in the United States will be over life in prison for juveniles.

Society has long maintained age distinctions for things like drinking alcohol and signing contracts, and the highest court has ruled that youths under 18 who commit terrible crimes are less blameworthy than adults. Defense lawyers and human rights advocates say that logic should extend to sentences of life without parole.

Prosecutors and representatives of crime victims say that a sentence of natural life is the minimum fit punishment for a heinous crime,

adding that some people are too dangerous ever to walk the streets.

In the Supreme Court's decision, Justice Anthony M. Kennedy said teenagers were different, at least for purposes of the ultimate punishment. They are immature and irresponsible. They are more susceptible to negative influences, including peer pressure. And teenagers' personalities are unformed. "Even a heinous crime committed by a juvenile," Justice Kennedy concluded, is not "evidence of irretrievably depraved character."

Most of those qualities were evident in Ms. Falcon, who had trouble fitting in at her Kansas high school and had been sent by her mother to live with her grandmother in Florida, where she received little supervision. She liked to smoke marijuana, and ran with a series of cliques. "I was looking for identity," she said. Like many other lifers, Ms. Falcon is in prison for felony murder, meaning she participated in a serious crime that led to a killing but was not proved to have killed anyone.

In their report, the human rights groups estimate that 26 percent of juvenile offenders sentenced to life without parole for murder were found guilty of felony murder. A separate Human Rights Watch report on Colorado found that a third of juveniles serving sentences of life without parole there had been convicted of felony murder.

The larger question, advocates for juveniles say, is whether any youths should be locked away forever. At the argument in the juvenile death penalty case, Justice Antonin Scalia said the reasons offered against execution apply just as forcefully to life without parole. Justice Scalia voted, in dissent, to retain the juvenile death penalty.

"I don't see where there's a logical line," he said at the argument last October. When it comes to Ms. Falcon, the prosecutor in her case said she does not ever deserve to be free. Indeed, she is lucky to be alive.

The prosecutor, Jim Appleman, is convinced that she shot Mr. Phillips. "If she were a 29-year-old or a 22-year-old," he said, "I have no doubt she would have gotten the death penalty."

Ms. Falcon dressed up, as best one can in prison, to meet two journalists not long ago. There was nothing to be done about the plain blue prison dress, with buttons down the front.

But she wore gold earrings, a crucifix on a gold chain and red lipstick. Her dark hair was shoulder length, and her eyes were big and brown.

She said her eight years in prison had changed her. "A certain amount of time being incarcerated was what I needed," she said. "But the law I fell under is for people who have no hope of being rehabilitated, that are just career criminals and habitually break the law, and there's just no hope for them in society. I'm a completely different case. My sentence is unfair," she added. "They put you in, and they forget."

### ***Tagging Along on a Horrific Night***

The case of another Florida teenager, Timothy Kane, demonstrates how youths can be sent away for life, even when the evidence shows they were not central figures in a crime. Then 14, Timothy was at a friend's house, playing video games on Jan. 26, 1992, Super Bowl Sunday, when some older youths hatched a plan to burglarize a neighbor's home. He did not want to stay behind alone, he said, so he tagged along.

There were five of them, and they rode their bikes over, stashing them in the bushes. On the way, they stopped to feed some ducks.

Two of the boys took off at the last moment, but Timothy followed Alvin Morton, 19, and Bobby Garner, 17, into the house. He did not want to be called a scaredy-cat, he said. "This is," he said in a prison interview, "the decision that shaped my life since."

The youths had expected the house to be empty, but they were wrong. Madeline Weisser, 75, and her son, John Bowers, 55, were home. While Timothy hid behind a dining room table, according to court records, the other two youths went berserk.

Mr. Morton, whom prosecutors described as a sociopath, shot Mr. Bowers in the back of the neck while he pleaded for his life, killing him. Mr. Morton then tried to shoot Ms. Weisser, but his gun jammed. Using a blunt knife, Mr. Morton stabbed her in the neck, and Mr. Garner stepped on the knife to push it in, almost decapitating her.

"I firmly believe what they were trying to do was take the head as a kind of souvenir," said Robert W. Attridge, who prosecuted the case.

Mr. Morton and Mr. Garner did succeed in cutting off Mr. Bowers' pinkie. They later showed it to friends.

Mr. Morton was sentenced to death. Mr. Garner, a juvenile offender like Mr. Kane, was given a life sentence with no possibility of parole for 50 years. Mr. Kane was also sentenced to life, but he will become eligible for parole after 25 years, when he will be 39. However, he is not optimistic that the parole board will ever let him out. Had he committed his crime after 1995, when Florida changed its law to eliminate the possibility of parole for people sentenced to life, he would not have even had that hope.

Florida is now one of the states with the most juveniles serving life. It has 600 juvenile offenders serving life sentences; about 270 of them, including Ms. Falcon, who committed her crime in 1997, are serving life without parole.

Data supplied by the states on juveniles serving life is incomplete. But a detailed analysis of data from another state with a particularly large number of juvenile lifers, Michigan, shows that the mix of the life sentences - those with the possibility of parole and those without - is changing fast.

In Michigan, the percentage of all lifers who are serving sentences without parole rose to 64 percent from 51 percent in the 24 years ended in 2004. But the percentage of juvenile lifers serving such sentences rose to 68 percent from 41 percent in the period. Now two out of three juvenile lifers there have no shot at parole.

The *Times'* survey and analysis considered juvenile lifers generally, while the human rights report examined juveniles serving life sentences without parole. Both studies defined a juvenile as anyone younger than 18 at the time of the offense or arrest. For some states that could not provide a count based on such ages, the studies counted as a juvenile anyone under the age of 20 at sentencing or admission to prison.

Juvenile lifers are overwhelmingly male and mostly black. Ninety-five percent of those admitted in 2001 were male and 55 percent were black. Forty-two states and the federal government allow offenders under 18 to be put away forever. Ten states set no minimum age, and 13 set a minimum of 10 to 13. Seven states, including Florida and Michigan, have

more than 100 juvenile offenders serving such sentences, the report found. Those sending the largest percentages of their youths to prison for life without parole are Virginia and Louisiana.

### ***Some Dismay Over Sentences***

Juvenile lifers are much more likely to be in for murder than are their adult counterparts, suggesting that prosecutors and juries embrace the punishment only for the most serious crime. While 40 percent of adults sent away for life between 1988 and 2001 committed crimes other than murder, like drug offenses, rape and armed robbery, the *Times* analysis found, only 16 percent of juvenile lifers were sentenced for anything other than murder.

In those same years, the number of juveniles sentenced to life peaked in 1994, at about 790, or 15 percent of all adults and youths admitted as lifers that year. The number dropped to about 390, or 9 percent, in 2001, the most recent year for which national data is available.

Similarly, the number of juveniles sentenced to life without parole peaked in 1996, at 152. It has dropped sharply since then, to 54 last year. That may reflect a growing discomfort with the punishment and the drop in the crime rate. It is unclear how many juveniles or adults are serving life sentences under three-strikes and similar habitual-offender laws.

Human rights advocates say that the use of juvenile life without parole, or LWOP, is by one measure rising. "Even with murder rates going down," said Alison Parker, the author of the new report, "the proportion of juvenile murder offenders entering prison with LWOP sentences is going up."

The courts that consider the cases of juvenile offenders look at individuals, not trends. But sometimes, as in Mr. Kane's case, they express dismay over the sentences that are required.

"Tim Kane was 14 years and 3 months old, a junior high student with an I.Q. of 137 and no prior association with the criminal justice system," Judge John R. Blue wrote for the three-judge panel that upheld Mr. Kane's sentence. "Tim did not participate in the killing of the two victims."

These days, Mr. Kane, 27, looks and talks like a marine. He is fit, serious and polite. He held

a questioner's gaze and called him sir, and he grew emotional when he talked about what he saw that January night.

"I witnessed two people die," he said. "I regret that every day of my life, being any part of that and seeing that."

He does not dispute that he deserved punishment. "Did I know right from wrong?" he asked. "I can say, yes, I did know right from wrong."

Still, his sentence is harsh, Mr. Kane said, spent in the prison print shop making 55 cents an hour and playing sports in the evenings.

"You have no hope of getting out," he said. "You have no family. You have no moral support here. This can be hard."

Mr. Attridge, the prosecutor, who is now in private practice, said he felt sorry for Mr. Kane. "But he had options," Mr. Attridge said. "He had a way out. The other boys decided to leave."

In the end, the prosecutor said, "I do think he was more curious than an evil perpetrator."

"Could Tim Kane be your kid, being in the wrong place at the wrong time?" he asked. "I think he could. It takes one night of bad judgment and, man, your life can be ruined."

### ***Different Accounts of a Crime***

Visitors to the women's prison here are issued a little transmitter with an alarm button on it when they enter, in case of emergency. But Ms. Falcon is small and slim and not particularly threatening.

She sat and talked, in a flat Midwest tone married to an urban rhythm, on a concrete bench in an outdoor visiting area. It was pleasant in the shade.

Her mother, Karen Kaneer, said in a telephone interview that her daughter's troubles began in Kansas when she started to hang around with black youths. "It wasn't the good black boys," Ms. Kaneer said. "It was the ones who get in trouble. She started trying marijuana."

Not pleased with where things were heading, Ms. Kaneer agreed to send Rebecca away, to Panama City, Florida, to Rebecca's grandmother. "It was my husband's idea," Ms. Kaneer said ruefully, referring to Ms. Falcon's stepfather. "Her and my husband didn't have the best of relations."

Ms. Falcon received a piece of unwelcome news about an old boyfriend on the evening of Nov. 18, 1997, and she hit her grandparents' liquor cabinet, hard, drinking a big tumbler of whiskey. Later on, when she joined up with her 18-year-old friend, Mr. Gilchrist, she said, she did not suspect that anything unusual was going to happen. She thought they were taking the cab to a party.

"I didn't know there was going to be a robbery at that time," she said. "I mean, Cliff said things like he was going to try out his gun eventually, but as far as right then that night in that situation I didn't know."

Asked if she played any role in the killing, Ms. Falcon said, "No, sir, I did not." In a letter from prison, where he is serving a life term, Mr. Gilchrist declined to comment. At his trial, both his lawyer and the prosecutor told the jury that Ms. Falcon was the killer.

The medical evidence suggested that the passenger who sat behind Mr. Phillips killed him. But eyewitnesses differed about whether that was Ms. Falcon or Mr. Gilchrist. Several witnesses did say that Ms. Falcon had talked about violence before the shooting and bragged about it afterward.

"On numerous occasions she said she wanted to see someone die," Mr. Appleman, the prosecutor, said. Ms. Falcon said the evidence against her was "basically, that I was always talking crazy."

The testimony grew so confused that at one point Mr. Appleman asked for a mistrial, though he later withdrew the request. Though their verdict form suggested that they concluded that Mr. Gilchrist was the gunman, the jurors remain split about what was proved. "There was no evidence presented to confirm who was the actual shooter," said Mr. Sharp, the jury's foreman.

But Barney Jones, another juror, said he believed Ms. Falcon shot the gun. "She was confused," he said. "She was probably a typical teenager. She was trying to fit in by being a violent person. The people she hung out with listened to gangster rap, and this was a sort of initiation."

Whoever was to blame, Mr. Phillips's death left a terrible void. "Each day we see a cab, the memories of our son and the tragic way he died surfaces," his father and stepmother, Roger and Karen Phillips, wrote at the time of

the trial in a letter to Mr. Gilchrist, according to an article in The News-Herald, a newspaper in Panama City.

At the prison here, as Ms. Falcon talked, a photographer started shooting, and she seemed to enjoy the attention, flashing a big smile at odds with the grim surroundings. It was a break, she explained, from the grinding monotony that is the only life she may ever know. She reads to kill time and to prepare herself in case a Florida governor one day decides to pardon her.

She had just finished a book on parenting. "If God lets me go and have a kid," she said, "I want to know these things so I can be a good mother."

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## 9. And Now for Something Completely Different...!

A father passing by his son's bedroom was astonished to see the bed was nicely made and everything was picked up. Then he saw an envelope propped up prominently on the centre of the bed. It was addressed, "Dad".

With the worst premonition, he opened the envelope and read the letter with trembling hands:

*Dear Dad,*

*It is with great regret and sorrow that I'm writing you. I had to elope with my new girlfriend because I wanted to avoid a scene with Mum and you. I've been finding real passion with Joan and she is so nice, even with all her piercings, tattoos, and her tight Motorcycle clothes. But it's not only the passion Dad, she's pregnant and Joan said that we will be very happy.*

*Even though you won't care for her as she is so much older than I, she already owns a trailer in the woods and has a stack of firewood for the whole winter. She wants to have many more children with me and that's now one of my dreams too.*

*Joan taught me that marijuana doesn't really hurt anyone and we'll be growing it for us and trading it with her friends for all the cocaine and ecstasy we want. In the meantime, we'll pray that science will find a cure for AIDS so Joan can get better; she sure deserves it!!*

*Don't worry Dad, I'm 15 years old now and I know how to take care of myself. Someday I'm sure we'll be back to visit so you can get to know your grandchildren.*

*Your son, John*

*PS: Dad, none of the above is true. I'm over at the neighbour's house. I just wanted to remind you that there are worse things in life than my report card that's in my desk centre drawer. I love you!*

*Call when it is safe for me to come home.*

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## **10. Teen Tells: "I Didn't Crash or Kill Anyone Only by a Miracle"**

*This essay, written by a teenager who was charged with a drink driving offence, was described by His Honour Judge Fraser as "insightful" and "impressive" when the teenager read it to the Napier Youth Court.*

ON THE fifteenth of June this year I made a mistake. This wasn't your usual whoopsydaisy kind either. I made a poor choice to drink and drive. I had been at a 21<sup>st</sup> with some friends having a few drinks and after those "few" trouble broke out and there was a fight between my friends. Angry and drunk, getting away from everyone at the party seemed like a good idea.

I started drinking in Form 3. Life was really upside down right then and having an alcoholic father made getting my hands on alcohol not difficult. I drank because it was fun, we always had a laugh. It's amazing what a drink can do for your social life. I'd feel free and happy to be who ever or whatever, whenever and however I felt. I didn't care, it felt better than the alternative, sober. I was never worried in the slightest about how my head was going to feel in the morning. My weekend drinking gave me something to look forward to. Even though I was feeling myself the whole time spiralling down slowly, every time a drink touched my lips. Getting drunk is just an anaesthetic numbing out all troubles, worries, fears and pain.

From the party I took off to my friend's house as the night was still young. I arrived still

shaking in shock and pretty hurt from the fact I'd just lost a good friend. My friend was welcoming, but not the comfort I needed. Home was all I could think of and, from Hastings, driving was the only way. My friend had let me drive her car before and I thought, considering I hadn't been able to touch a drink since I got there, I'd be sweet to drive home.

That's the thing with alcohol – you're not thinking clearly, if at all. The anaesthetic had numbed out my straight and responsible self-conscious, letting my ignorance to rebel get the better of me and put me in the driver's seat. Thinking nothing of the fact I had no licence, I was off out the drive. It was a crisp winter night and the neighbourhood was still. Being behind the wheel stopped the fighting for freedom and let me be. I didn't crash or kill anyone only by a miracle and God on my side. I couldn't live with the guilt of manslaughter or know how to apologise to the family of those whose lives I'd destroyed. Who would?

Being under the influence of alcohol I can't say I remember a lot. All I know is I felt everything, from the build up of when I started drinking, crash and fall on top of me when I was pulled up.

My life is complicated. I argue with my mother about everything and have done my whole life; my father is a drunk with long-term drug abuse mental illness. With intense anger problems that he liked to take out on me. I haven't lived in the same house or town for more than six months for longer than I can remember. And that's not even the beginning. I've left school, which wasn't by choice. I also am nearly \$10,000 in debt and I'm only 17.

This isn't a sob story or a self-pity trip to make me look innocent; it's more an insight into me and my feelings. An explanation rather than an excuse. I don't blame my mother for not being surprised when she got the call from the police early Sunday morning. I can't blame my mother for kicking me out either. I do my own thing I'm doing my own thing now. I pay my own rent; buy my own food, responsibility works for me.

I'm not just a rebellious teenager who doesn't get on with either of her parents. The reality is I have a personality clash with my mother. I think it's because we're so much alike and yet different in our beliefs and morals on how each of our lives should be lived that it's easier on both to live separate lives. It doesn't make a difference, all of these things. The fact is drink-

driving is against the law, driving without a licence is against the law. I broke the law and I know it. I know it well now. Through my young adolescence I was rebellious but not one involved with the law, until that night. It knocked a shock into me and straightened me out. I didn't touch a drink for nine weeks and haven't got behind the wheel of a car since. I don't really have the money to drink now either. The true joys of flatting – you're always broke and toast is a regular meal.

Thinking, the pure stupidity of it now, thinking straight about how many car accidents there are, regardless if alcohol is involved or not. Drinking and driving contributed to 124 intensely fatal crashes and 141 deaths in 2003. All these people's family and their friends would be so hurt. I could have destroyed their lives. I'd never be so selfish again to not think of the impact my stupidity would have on everyone else who would exist in the scenario after. So far in 2005 there have been 284 road deaths. It's only September.

Although alcohol is one of the most socially acceptable drugs, a stern view should be taken on drinking and driving. All you drink is absorbed into your blood stream and when you've been drinking your chances of crashing are high. Drink-drivers contributed 31 percent of fatal road crashes in New Zealand in 2003. It's because once the alcohol is absorbed into your blood stream it's taken up by cells in your vital organs – like your brain. This experience, although my first with the law, has taught me about how not worth it drink driving is. Drink-driving is irresponsible and selfish. The punishments are too high and although you may be having a good old time driving around, chances are it's not going to be a good outcome. Alcohol and speed kill. By portraying my life to you I hope you understand now as well as I do that when you drink and drive, people die. There is no excuse, no matter the circumstance. My message to young people out there is enjoy being young, live it up, party hard, go out and have fun – but while doing all this learn to be responsible. Realise the world doesn't revolve around you. So take care to watch out for others no matter how smashed you may be. Your whole life is ahead of you, don't waste it or screw it up. It's not worth your while.

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## **11. Judge Advocates Lower Youth Detention: A View from Victoria, Australia**

*This story appeared in The Melbourne Age newspaper on 13 September 2005. It features Jennifer Coate, long standing President of the Children's Court of Victoria, a strong advocate of children's rights.*

THE PRESIDENT of the Children's Court of Victoria claims that record low figures in the sentencing of juveniles vindicates the humane use of rehabilitation rather than punishment.

Judge Jennifer Coate said statistics showed the numbers of young offenders sentenced to youth training centres were at a five-year low. And juvenile crime rates coincided with falls in youth centre incarceration rates.

She argued that despite "moral panics" by groups advocating more punitive responses to young offenders, the statistics proved otherwise.

Judge Coate said: "If our YTC incarceration rates were going down, but our juvenile offending rates were remaining the same or going up, we would have to say that something's not right and that perhaps we are not sentencing appropriately.

"But it is to the undoubted benefit of us as a community generally that we are able to say that a humane and rehabilitative approach to our young offenders is what is producing positive results for Victoria."

She said those that argued that punishment was the appropriate response to criminal offending would find that disputed by the statistics.

In 2000-01, 179 offenders were detained in youth training centres, but figures for 2004-05 are expected to show a drop to 120. In the same period, detentions in youth residential centres fell from 27 to 11.

Judge Coate acknowledged that the police had shown steady and consistent improvement in the way they worked with juveniles. She said the police had developed programs for dealing with young people and had been more socially pro-active rather than prosecutorial.



Child protection authorities also deserved recognition, but Judge Coate said the judiciary, and particularly Children’s Court magistrates across Victoria, “should take some comfort and pride in the figures”.

“Arguably, the way in which we are sentencing young people and putting our emphasis on rehabilitation, re-integration and restoring (them) into their communities means they’re not re-offending,” she said.

Australian Institute of Criminology figures show that Victoria has the lowest rate of youth detention in Australia. The figures will increase now that 17-year-olds have been added to the youth classification, which will mean dealing with more crimes of rape, armed robbery and arson.

The heads of some interstate jurisdictions envy Victoria’s progress, which Judge Coate felt came from “emphasising the need to respond in a child protective way to our potentially antisocial young people”.

Judge Coate, appointed to the County Court in 2000, will now also sit in the newly opened Children’s Koori Court. She said she and her colleagues were committed to assisting young people to avoid the “complete human waste of a life spent being regurgitated throughout the criminal justice system”.

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## **Youth Offending Team Workshops**

*By Leigh McPhail, Advisor – Youth Justice Team, Ministry of Justice*

THE MINISTRY of Justice, in association with the Youth Justice Leadership Group, is holding a training workshop for Youth Offending Team representatives on 22 and 23 February 2006.

The focus of the Wellington workshop will be on providing the Youth Offending Team, or “YOT”, representatives with skills to make their YOT work more effective; the ultimate aim being to enable their YOT to translate the Youth Offending Team’s ideas into practice to improve their local youth justice system.

The workshop will identify the strengths that each agency brings to the YOT, the hurdles they must overcome to work together effectively and the solutions that they can use to overcome these hurdles.

It is anticipated that a high level of sharing will occur between participants so that all teams can learn from one another. Members of the Youth Justice Leadership Group will also attend the workshop.

Due to the interactive nature of the workshop, we are limiting numbers to 60 Youth Offending Team representatives.

We hope to be able run a series of regional youth justice conferences during the 2006/2007 year, which will be open to the wider youth justice community.

***Special Feature:***  
***SPCYCC/UNICEF Child & Youth Justice Workshop***  
***in Fiji***  
***His Honour Judge Harding***

*His Honour Judge Harding travelled to Fiji to assist in running a South Pacific child and youth justice workshop in October 2005.*

OVER recent years, Heads of Children's and Youth Courts from New Zealand, the Australian states and, more recently, from various South Pacific nations have been meeting annually to discuss child and youth justice and protection issues. The ever-expanding group, which now includes delegates from Fiji, Kiribati, Vanuatu, the Solomon Islands, Papua New Guinea and Samoa, has become known as the "South Pacific Council of Youth and Children's Courts" (SPCYCC). At SPCYCC's July meeting, the need to assist smaller nations in developing their youth justice services was identified. In response, a three-day child protection and youth justice workshop was held in October in Fiji, and District and Youth Court Judge Harding from Tauranga attended as a speaker and workshop facilitator.

The workshop was primarily for the benefit of Magistrates from the Solomon Islands, Vanuatu, Kiribati, Samoa and Fiji. It was jointly sponsored by SPCYCC and UNICEF Pacific and funded and managed by UNICEF Pacific. Sessions aimed to enhance the knowledge and capacity of magistrates from these smaller nations in implementing child and youth justice and protection. A further aim of the conference was to strengthen the SPCYCC as a mechanism for enhancing child and youth justice and protection in the Pacific. Over the three days, delegates took the opportunity to share and develop best practice, methodologies, techniques and skills regarding child sensitive court procedures.

Judge Harding led a session on why young people are different, and ought to be treated in a different way from adults, and produced a paper on writing judgments for the attending Magistrates.

The smaller countries presented information on child and youth justice issues and practices in their own jurisdictions. Samoa's presentation focused on challenges and progress achieved in Samoa in the absence of necessary legislative and institutional support. Fiji's presentation dealt with the implementation of child and youth justice systems including child protection principles and standards in Fiji under existing legislation. Draft youth justice legislation, developed by Judge Boshier (now the Principal Family Court Judge of New Zealand), was presented to the conference.

Further topics included domestic and international child rights law, introduction to the philosophy and jurisdiction of children's and youth courts, best Court practices for child witnesses, meaning of "best interests of the child" and sentencing options. Court simulations gave participants the opportunity to see the differences between adult Courts and child and youth Court in terms of setting, language, judicial conduct and demeanour, procedure and orders.

Ways of achieving better practice, even in the absence of specific Youth Court legislation, which does not exist in a number of the jurisdictions represented, were discussed. Suggestions such as separate times for youth hearings, and keeping young people away from adults were offered as ways to advance the interests of young people even in the absence of specific legislation, as was the power of the adjournment to monitor and review progress. The New Zealand conferencing system was seen as a potentially useful way of resolving issues involving young people, and a system in tune with village approaches in various Pacific cultures. The involvement of families and victims was also seen as helpful.

Before drawing to a close, the workshop developed action plans to progress child and youth justice in the various countries represented. Judge Harding agreed to provide ongoing support for the Solomon Islands.

Cartoon by Jim Hubbard from *Hawkes Bay Today*, 27 October 2005

