THE NEW ZEALAND CRIMINAL JUSTICE SYSTEM

Problems of High Needs Offenders?

Judge Philip Recordon *

SUMMARY

New Zealand's society is made up of a number of ethnic, age, socio-economic, and other distinct and not so distinct groups. My aim is to focus on some of those who come into contact with the law, partly or primarily because of personal issues and problems contributing to their offending, to ascertain if their issues are being addressed and, if not why not, and what can be done about it?

To do this I have used my experience as a lawyer and Judge, interested in the disabled and needy, to consider, in particular, the high needs offenders in Youth Court, Family Violence Court, and prison. To help me, I have read widely in the specific areas and gathered information and statistics to help assess the situation and to enable the plotting of a future path.

My findings and conclusions are clear in that, generally, the needs of those with difficulties, appearing before the Courts, are not being met. Not so clear is the area of the country's mood and ability to fill very clear gaps in the way those people receive help.

What the research shows is that early and expert interventions work. Some of these interventions, such as Multi-Systemic Therapy, are intensive, expensive, and require commitment from the Ministry of Justice, Corrections, Welfare, and other authoritative entities. The commitment is lacking and the alternative existing entities which could be used to help, such as Youth Offending Teams, are under-utilised and, generally, without direct focus on the difficult areas.

The Family Violence Court, at Waitakere, could be a model for the rest of the country and there are plans for other similar Courts, but the ideas and methods involved are likely to be diluted unless Judges and society can be persuaded to think 'change' rather than 'punishment'.

Prisons provide an easy solution for Courts dealing with offenders with issues such as chronic substance abuse, notwithstanding the dearth of intensive rehabilitation opportunities in prison and absence of careful follow-up on release. Can we make changes?

TABLE OF CONTENTS

1. INTRODUCTION

[1.1] In March 2006, Sir Geoffrey Palmer, the new President of the Law Commission, spoke of the Commission as independent but, as a law reform agency, needing to be attentive to the Executive Government and Parliament as the bodies responsible for implementing any changes it recommended. He said that no organisation spending taxpayer money can engage in the design of utopian schemes that have no prospect of being adopted. He said that "a fundamental threshold question that needs to be asked is whether legislation is required… in many cases. Too often the question is not asked. More imagination is required to avoid cluttering up the statute book with unnecessary laws"[1].

[1.2] In the first 20 years of the Law Commission's life there were 72 "final" reports, the majority of which had influenced policy and legislative changes for the government[2]. Increasingly, the Courts, and in particular the District Courts of New Zealand, are asked to deal with issues which in an ideal society would be filtered off to special-needs appropriate forums from the outset. A therapeutic community, committed to its objectives and people, would have an array of entities, some of them courts in the traditional sense, but the majority, a form of social service properly resourced to deal with issues of Mental Health, disabilities of one sort or another, those with drug and alcohol dependencies.

[1.3] It is often these people whose needs are not met by the criminal justice system, but who slip through the cracks and come before the Courts as "offenders", who present a challenge to those who greet them and have to deal with them in the arrest/custody Court, on a Monday morning.

[1.4] For a society full of anger and anxiety generated by some of the offending of these people, there is a difficult balancing act which tests the calibre of the Judge and the whole Court structure. Certain legislation, such as the Compulsory Care Legislation[3], goes some way to show that society is at least aware of the issues of people who are different because of their high needs. But the perception generally is that he or she who commits a crime should be dealt with in the normal way through the normal justice system.

[1.5] The level and nature of crime is, understandably, a source of proper public concern. The murder last year in Tokoroa of a sixty seven year old teacher of new-entrants at the local primary school produced a level of anger and anxiety for our society not easily addressed. The cry is out for increasingly punitive reactions and laws and the danger is we will lurch from one ineffective reaction to another.

[1.6] As a human being, one-time lawyer and social activist, and now a Judge of a Court with general jurisdiction in Waitakere, the drug "P" (or crystal methamphetamine) capital of the country, I am concerned with wider values in the justice system than the ends of punishment in particular cases. It is trite to say that crime and its causes cannot

adequately be addressed through penal policy alone nor through Judges with liberal tendencies. It is critical that the strategies for addressing crime and its causes are wider than what the penal system and penology can deliver. For many of those with high needs, crime is a social pathology with the need to involve medical and social services when dealing with it. The prevention of crime must be the primary sentencing policy. For those with disabilities of one sort or another (including drug and alcohol dependency), some of which are cognitive and many of which are chronic, the prevention of future offending will involve a consultative process with practical involvement of a number of people and groups within society from the Sensible Sentencing Trust at one extreme, to the Civil Libertarian groups on the other.

[1.7] Public and political debate on crime and its reasons is healthy but mass communication is often responsible for mass misinformation and a cry for harsher sentences, often in the guise of a call for consistency with sentences.

[1.8] A recent successful appeal involved a man frequently under the media spotlight and often described as "druggie, gangster, rich boy – Mark Lyon"[4]. Lyon was given a chance in the community following a number of charges involving knives, gun and ammunition (found on him in a public place) and was ordered by the District Court to undergo two hundred and eighty hours community work and to attend to his drug issues. The Crown appealed the District Court sentence. Mark Lyon had something of a reputation in Auckland as a talented but flawed individual, associated with gangs and the drug world. Lyon appealed his conviction. His appeal failed. The Crown's succeeded. A prison sentence replaced the community-based sentence. A reason he had not been sent to prison was to keep him away from the people he will now be with and who had, in the past, influenced him and who will influence him in an ongoing way, in prison and on release, having regard to his weak nature and drug dependency. I was the District Court judge involved. The purpose of the sentencing was to try to involve Mark Lyon in changes to lifestyle and attitude, especially with regard to drug use. By keeping him involved in the community working with his drug issues, paying back some of his debt to society through his community work, there was a chance he could turn his life around. His family was involved with him. Their values were not his.

[1.9] For me, everything pointed to the possibility of rehabilitation. The attitude of the media, both television and the written word, was that the man should not be given a chance and should be locked up as an example for others. While consistent with the public deterrence, personal deterrence purposes and principles of the *Sentencing Act*, this was, in my view, a short term fix.

[1.10] In fact, the police and Crown did give him a chance and it was only after he had shown that he was not going to take advantage of the chances given by the court, that the appeal was followed through with by the Crown with prison the result.

[1.11] The end result was the right one given his inability or unwillingness (or both) to take advantage of what was offered to him. He had many months from sentence to appeal to make changes, but did nothing.

Nature of Existing Problem with High Needs Offenders

[1.12] I am neither criminologist nor psychologist. My training is as a lawyer, though, from the early 1980's, my chosen work path was with high needs consumers, particularly in the disability field. I have also worked with those who have come into contact with the courts through offending often linked with personality issues, mental health issues and alcohol and drug problems. Many of these people could have benefited from specialist intervention of one sort or another but ended up going through the criminal Justice system without any particular or special assistance or interventions.

[1.13] The frustrations of being a District Inspector of Mental Health or counsel in family or criminal cases were huge when observing and encountering the frequent illogical, irrational, mindless waste of resource and lack of resource, and the stupidity of bureaucracy when confronted with difficult issues. For whatever reason, there was and still is an unwillingness and/or inability for individuals and public entities such as Criminal Justice, Child Youth & Family, Social Welfare, and Mental Health to work together and to share responsibilities in a constructive way in the interests of high needs offenders, many of whom flounder and collapse because of the unwillingness or inability of the state for one reason or another to come to terms in a reasonable time with just what it takes to help people get back onto constructive paths. This may have a financial basis. The Edwards "brothers"[5], one of whom killed a prominent gay businessman in Ponsonby in 2004 and the other who abducted and raped a number of defenceless women in West Auckland in 2005/06, presented to the Court with reports on their psychological, economic, and family backgrounds, so predictable that the report writers could simply fill in the blanks for details, with the general headings already written in black. They both had violent upbringings with no positive male role models. Both good-looking young men, they drifted into drugs, gay prostitution, dishonesty and violent offending to satisfy their drug habits. I dealt with the 'second' brother at Waitakere Court prior to his going to the High Court for sentencing. He was a sad and sorry person, from appearances, from my discussions with him and from reports given to me which led to my declining jurisdiction and transferring him to the High Court for sentence.

[1.14] It did not take long for me to come to terms, as a Judge, with what I already had a fair idea of as a barrister within the criminal justice system. Judges are generally over cautious when assessing risk, especially in the areas of bail, parole and Mental Health. The easy thing for a judge is to incarcerate rather than release into the community with safeguards – suitable, sensible safeguards based on evidence of what works for others and of what has worked in the past for a particular individual.

[1.15] Given the daily dealings judges have with risk and the reliance on individuals and community services for rehabilitation and managing risk, one would expect better

education of judges and more money and resources to be poured into rehabilitation, including, and in particular, in prisons. I recently attended a workshop at the Auckland Regional Forensic Unit where Dr Sandy Simpson, the head of the Mason Clinic, spoke on assessing risk. I suggested afterwards to the chief judge that judges could benefit from Dr Simpson's expertise at an upcoming conference. Not on the agenda so far!

[1.16] Only 6% of the Corrections budget is in any one year dedicated to rehabilitation within prisons with less than 2% addressing the very obvious drug and alcohol, and mental health issues of so many of those incarcerated around the country[6].

[1.17] One of the Department of Corrections core strategic goals is reducing reoffending with a major strategy to achieve this and provide targeted rehabilitative intervention programs[7]. There is a psychological model of criminal conduct and cognitive behaviour theory with New Zealand programs geared to blending Maori concepts and Tikanga into the western psychological models. There are three primary principals – risk, needs and responsivity. Working out the risk is not easy, assessing needs is easier. The responsiveness of offenders is often difficult given the poor social skills, low intelligence, weak motivation to change and other issues such as drug and alcohol use. At Waitakere we have access to the Department of Corrections "straight thinking" programs and a number of other programs but having these followed through with is often a major issue and one which frustrates judges.

[1.18] Ken Mason's 1988 psychiatric report[8], led directly to the building of the Forensic Mental Health Unit in Auckland (the Mason Clinic) and highlighted the problems with treating those with mental health issues and, in fact, disability issues generally, within the confines of the prison. What has happened over the years is, that, while the Mason Clinic has expanded and continues to provide a Rolls Royce service for many, it is inadequate in its ability to treat all those within the justice system and particularly all those within prisons with mental health and related issues. The result is that psychiatrists and psychologists continue to work in the prisons with many men and women suffering a wide range of mental illness and other debilitating disabilities despite the existence of Section 45 of the *Mental Health (Compulsory Assessment and Treatment) Act* 1992 which enables transfers from prison to hospital. I am in regular contact with Dr Sandy Simpson and preside reasonably often over compulsory treatment hearings within the Mason Clinic and other mental health facilities in the Auckland area. I am unsure if there are figures available or, if there are figures, what those figures suggest as the numbers and nature of those in prison, who, in an ideal society, would be dealt with in hospital rather than in a prison environment.

[1.19] The failure of successive governments to amend the *Mental Health Act* to enable compulsory treatment within prisons is, in my view, inexplicable. The law as it is now does not allow compulsory treatment of those in prisons. Dr Simpson's view, as expressed to me, is that the law should not be changed and that Section 45 should enable those requiring treatment to be transferred. In fact, my observation is that this is not happening with the result that, other than those who choose to accept treatment in

prison, none of the other prisoners can be treated against their will and, accordingly, go untreated despite displaying symptoms of untreated psychosis.

[1.20] The Compulsory Care legislation[9] has led to the removal of a small number of inmates from prison to secure units, such as the Pohutukawa Unit at Mason, but the movement is slow. I have visited the unit on three occasions. The twelve beds were filled on opening day by men from the forensic psychiatric units in Porirua and Mason. Some have moved on but it is early days yet.

[1.21] We are not talking huge numbers of high risk people appearing before the Courts. At Waitakere we have a Family Violence Court every Wednesday with around forty cases called – sometimes more. On average thirty five of those cases will involve violence which can be sorted out with the likelihood that if the offenders come back to Court in future the offending will be at the lower end of the scale. The other five cases involve people with high needs including, for the most part, dependency on alcohol and/or drugs, and severe anger issues. Most of the forty or so offenders have needs of varying degrees. Judge Karina Williams was involved, before she died in late 2005, in the development of the Manukau Family Violence Court[10]. They have, there, scales of severity of violence descending in degree from three to one. The majority of cases in our court involve category one offending.

[1.22] There has been, and continues to be, considerable publicity on the effect on peoples' lives of methamphetamines. There are increasing numbers of people speaking out on the wide use and adverse affect of alcohol[11]. Despite the increased recognition of the dangers of alcohol and the effects and the direct connection with crime, especially violent crime, there is little evidence of adequate, measured, organised, structured and nationwide approaches to the problem. There are too many alcohol (and drug) agencies doing good work but independent of each other and in competition for funding – an unhealthy and wasteful situation. We have an Act[12] which retired Judge Trevor Gillies, when he was working at Otahuhu, was able to manipulate in order to get people to his beloved Rotoroa island in the Hauraki Gulf, where for many years the Salvation Army worked valiantly to change the behaviour of men and women. I have not spoken with Trevor recently but expect that while he is sad to see the island recently closed as a treatment centre, he would be pleased there are now a number of community live-in alternatives set up as replacements. The legislation is useless and should be replaced with something which empowers the Police and then the Court in ways which recognise the change in nature of addiction issues. There are detoxification facilities available in the Auckland area, for example, Grafton. They do valuable work. They are understaffed and under-resourced. There is an element of coercion in getting people into them. The Act is not used currently as a mechanism for entry. Legislation could be enacted to make use of detox centres and, through the legislation, ensure increased resourcing and centres. There could also be longer term treatment plans prescribed by an Act which could work in with other legislation including criminal justice legislation such as the *Crimes Act* 1961 and the *Summary Offences Act* 1981.

[1.23] A discussion of high needs offenders must involve an examination of young offenders and the complex, interrelated, multi-needs of young people and their families, and the strategies to change habits before they become ingrained.

[1.24] Even hard-liners, such as the Sensible Sentencing Trust, realise the need to consider alternatives to prison[13]. Alternatives have been mooted before but no one has taken them seriously. The *Sentencing Act* 2002 forms the basis of sentencing but there is wide discrepancy amongst judges throughout the country in sentencing for serious and not so serious offending. After appointment, judges attend "Judge School". It becomes clear there who the hardliners are and who will be the more therapeutically minded sentencers. Those in the first group rely, to an extent, on what they see as precedent and public opinion requiring them to remove offenders from contact with the public rather than considering alternatives which might provide some risk but, in theory at any rate, may improve the lives of these people and their families in the long term. The short term view, the reduction of risk and removal of the offender from society, albeit for a short period of time often, is the easy option taken by, in my opinion, too many.

Pre-empting the Problem

[1.25] There is little credit given to Judges who think outside the square. While the appeal processes are limited as far as the Police and the Crown are concerned, the willingness by judges in the District Court to attempt new initiatives and to take risks to go outside what might be considered the norm but still within the bounds of the *Sentencing Act*, is stunted somewhat by peer pressure to fit within certain sentencing parameters. The proposed Sentencing Council, which the Law Commission believes would be useful in achieving more consistency with sentencing in the District Court, will lead, in my view, to difficulties, divisions and infractions within the common rooms of the judiciary. While I do not see the Sentencing Council as necessary, discussions around it's formation could be beneficial, interesting and, in the long run, helpful in airing attitudes if not changing the methods of all judges. 'New judges' wanting to make a difference are increasing. Changes will be made in a number of ways, of that I have no doubt. I will outline how I see changes almost inevitably being made in the future in the course of this dissertation. There is a small, but growing number of judges increasingly dissatisfied with the delivery of justice and the failure of the system to address core issues.

[1.26] When I was appointed to the Bench, it was reported to me that Dr Jane Kelsey, from Auckland University, described the appointment as a "disappointment – another District Court workhorse – he should have remained doing what he was doing". There is some truth to that statement given the large numbers of offenders appearing daily in the list courts throughout New Zealand likening list courts to sausage factories. But I retain hope, certainly in the Youth Court and in our specialist Family Violence Courts, that smaller courts such as Waitakere can, even in their day to day business, case-manage

high needs offenders, especially those with drug and alcohol issues, so that positive changes can be made. The task for the Courts is to show that what we are doing differently works, in order that we persuade those who make decisions on laws and the working of the Courts to support us and to make changes that may be required from time to time.

[1.27] I had the privilege, many years ago, to sit over a twelve month period with the Court of Appeal in Rhiom, in the centre of France, in the 'Department' known as the Puy de Dome. On Thursdays, I sat with the president of the Court of Appeal and on a few other days, with the Youth Court. I observed the trial process from the body of the Court and was persuaded that certain of the process and substance of the French criminal justice system is arguably superior to ours. When a person is charged and appears in court there (for serious offending) it is incumbent on the defendant to front up and explain to the court what happened whether he or she is admitting or denying the charge. The methods used in the Family Violence Court at Waitakere are akin to this part of the French system in that we frequently talk directly to the defendant at the first possible opportunity to find out what his view is of his relationship and of the offending. Observers of our work in the Family Violence Court at Waitakere consider we run an inquisitorial system. Many of the lawyers who appear, and the judges who hear about it, do not like it as it runs contrary to the right to remain silent and leave the proving of the case to the police. The judge in France asks the majority of the questions. The lawyers say little. Truth is what the French court wants and they consider the Defendant's views essential early on in the case.

[1.28] We lead France and the other European countries in the area of Restorative Justice both in the Family Group Conference forum within the Youth Court (offender-focused), or in the adult court, victim-focused Restorative Justice Conference forum.

[1.29] That Restorative Justice 'Court' process has a cloud over it presently with pilots set up some years ago finishing and the future uncertain. A number of courts throughout the country, including Auckland and Waitakere, were asked to run the pilot within an agreed protocol as to which cases would be targeted. Resources were allocated, including a co-ordinator at each of the pilot courts. I met recently[14] with the facilitators and co-ordinators in West Auckland. While concerned with current uncertainties they form a united, strong and now, experienced body. The Restorative Justice society outside the Court, is strong and vibrant. The facilitators and co-ordinators are determined to keep Restorative Justice at the forefront and as an example to the world. At Waitakere, we have entertained overseas visitors exploring the Restorative Justice system. Recently, an Irish academic, Dr Sean McAllister, visited, hoping to find something of use for the Catholic/Protestant Irish centuries old ongoing problem. Before his visit, we hosted a prominent Japanese Judge, Yukihiko Kasai, sent by his government to enquire into the mechanism and concepts of Restorative Justice as practised in New Zealand.

2. OUTLINE OF THE PAPER

[2.1] For the purposes of the dissertation my concentration is in certain of the areas of interest, importance and relevance to me in my daily work:

- Young People and the issues specific and relevant to them;
- Drugs and alcohol including follow-up from prison. As a "Westie" Judge, I consider I have a responsibility to examine the particular problems presented by "P";
- Rehabilitation generally with prisons concentrating on drug and alcohol use;
- The specialist court we have at Waitakere based on therapeutic jurisprudential lines, the Family Violence Court.

[2.2] Mental Health and disability generally remains of great interest and concern to me but will not be directly addressed here.

[2.3] The Australia Chief Justice, Murray Gleeson, was quoted last year in the Australian Financial Review Magazine[15] as saying:

> *"I can't think of any examples in which I have self-consciously applied my own values… a Judge's duty is to administer justice according to law and if you can't perform that task then you shouldn't be a Judge. Those coming before the Court submit to an independent and impartial process, imperfect, but deliberative and reflective. The process is designed to minimise the intrusion of personal values of the decision-maker".*

[2.4] Yeah – right! (as the Tui ad says). A Judge's personal values may colour his or her judgment particularly in areas such as Family Violence. Despite a system designed to minimise the intrusion of personal values for the decision-maker, personal values and the way that society should act according to the judge, will, invariably, come into the decision making process.

[2.5] Justice Ted Thomas recounts the "parable of the activist Judge" in his book, "The Judicial Process"[16], of the drowning man and the judges asked to save him. Six conservative Judges make excuses why they will not rescue the man. The seventh activist Judge throws him a rope, the rope wraps around the Judge's foot and he ends up in the river with the drowning man. The reaction of the watching six conservatives, to the activist Judge's plea "save me", is indifference and the statement "We have always known that if you give an activist Judge enough rope, he will drown himself".

[2.6] Activism and interventionism must be properly thought out and wisely executed. It must also be 'sold' to important people such as potential funders. It helps if the public, or many of them at least are behind the proposal. Ted Thomas considered the chief strength of Lord Denning was his "creative ability to formulate a solution that would obtain general support, if not immediately, then in the fullness of time"[17].

[2.7] The relevance of this to specialist Courts and what we do, in particular, in our Waitakere Family Violence Court, is to ensure that what we do can be seen to work, and that we learn to appreciate when to push and when to pull back.

[2.8] Conclusions, recommendations, and negative and positive remarks will be made throughout the dissertation. I have views on how we can pull ideas and proposals together and amend or adapt current practices to address the needs of high needs offenders, and to improve the lives of all New Zealanders, but in particular those with special needs and those who are affected by those with special needs.

3. YOUNG OFFENDERS AND THE YOUTH COURT

[3.1] We have been fortunate in the selection over the last twenty years of our Principal Youth Court Judges, including Mick Brown, David Carruthers, and now, Andrew Becroft. Under these three there have been major changes in approach and process. The law relevant to minors, has been re-written albeit in a comprehensive wordy statute[18]. The law recognises that those under seventeen have special needs and that recognition is encompassed in the law and the way it is processed. Being able to give young people, especially young people with particular needs, a chance to address their issues through the Family Court conference process, even where the offending is serious (for example aggravated robbery), is seen to work time and time again. Andrew Becroft has statistics which would persuade even the most cynical, that in the short and the long term, results are positive in reducing drug and alcohol dependencies, anger, and other anti-social issues for young people[19].

[3.2] There are times, however, given the large numbers appearing weekly before the Youth Court, that Judges feel a little like a rubber stamp. That is certainly how I felt in my first days in Youth Court. Work had been done by counsel in obtaining a "not denied" plea followed by the Family Group Conference process and work from a social worker in preparing a report and a plan. There was oversight of the follow-through with the plan leading to the final disposition by the Judge. There were appearances in Court along the way involving two to three, or more, different Judges making it somewhat inevitable that the Judge at the end could feel akin to a rubber stamp. I was surprised, after my first few weeks in Youth Court, to find that case management was frowned on by colleagues, that this was seen as a way for clients and lawyers to "Judge shop", even in the Youth Court.

[3.3] The three Waitakere Youth Court Judges now rotate on a three-weekly basis. We must know six months out who will be sitting in Youth Court on a particular day. The

young people appearing in front of us get to know us and we get to know them. I refer certain cases to the other two judges where I consider their special qualities would assist. Getting to know offenders has happened by default in other smaller areas in the country where only one judge sits. The fact that what we are doing was seen as innovative and, at first, not something to be encouraged, I found quite staggering. We have always had Judge Becroft's support in this.

[3.4] Early on at Waitakere we noted as missing, anyone in Court with expertise in the substance abuse field. We now have sitting in Youth Court a young man from the local Waipareira Trust. Young people, he, or the Judge, or any of the other participants in the Youth Court, consider might have a substance abuse issue requiring discussion, now talk with "Adam" after their appearance in Court. There is no Ministry funding to pay Adam, he is paid by Waipareira. We are unsure of Adam's qualifications to do the job but we welcome him in the Court each week expecting, daily, that someone will ask how he is qualified to deal with issues and to assist with young peoples' problems. We have had queries from lawyers as to why he is there and where he should sit. He now has his own seat and table and has become part of the whole. Feedback is positive but how long can we retain him?

[3.5] The young people appearing before us in Youth Court are supposed to be the more difficult young people. There is a filtration system involving Youth Aid and community groups. Some 80% of those coming into contact with the law never get to have the pleasure of meeting a Judge[20]. Around 90% of the 20% who are brought to Court do not have high needs in the form of drug, alcohol, conduct disorder, personality, mental health, disability, anger, violence, poverty, education, accommodation issues, and they are very much like me and most of my friends and acquaintances, except younger and with more hair. One of the highlights of my week, when I was fourteen, was finding a garage in the local neighbourhood open and full of beer so, with one mate keeping a lookout, the rest of us could load up our bags and trolleys to ensure a good weekend. I was never caught and charged but some of my friends were. One or two went to Court but most escaped with a severe telling off – usually accompanied by a whack or two, as was the practice in those days. I wonder what the number of judiciary would be reduced to if there were automatic disqualification for those admitting to having broken the law, in a range of ways, prior to joining the Bench!

[3.6] The way the system works for nine out of ten of the kids coming to court, is the way it should work. While some, and possibly many, will return in one way or another into the Court system, it will generally be for minor or lower range offending, not reflective of the existence of high needs but more social and economic circumstances – in many ways a reflection of and on society rather than on the individual. Two out of the twenty, however, will have special needs of one sort or another which require addressing if they are to live securely and safely in the community now and in the years to come. In most cases those needs are not being met by the current system. They are often pinpointed and highlighted through Family Group Conferences and through behaviours,

especially where violence, alcohol or drugs are combined or disabilities and alcohol or a variety of other combinations of "issues" are evident, but there are limited systems and structures in place to deal with these people. Odyssey House[21] continue to tell me that they have room in their residential rehabilitation programmes most of the time for young people (compared with the waiting lists for adults) but there are deficiencies in the referral mechanism for Judges and/or social workers and others. We have no mechanisms at Waitakere for obtaining regional forensic assessments for young people we suspect have mental health issues! For adults yes, but not for kids. Section 333[22] is used to get reports from psychologists or psychiatrists – often delayed and seldom useful.

[3.7] We have spoken at Waitakere of the need for better systems for referrals and the need for assistance. A Judge pontificating in Court once every three or four weeks for ten minutes is inadequate. Too often our concerns are with young Maori offenders, many of whom have been bought up in dysfunctional family situations with alcohol, violence, and changing partners for one or both parents, a regular and often dangerous occurrence.

[3.8] At Waitakere Court, Judge Heemi Taumaunu has been keen to shift some of the services provided by the Court to the local multi-tribal Hoani Waititi Marae, the stomping ground of Pita Sharples and, our much-loved Marae court worker, Phil Paki. My view was and remains that while this would be hard to achieve for all those appearing before the Youth Court (for no other reason than geographical transport issues – it is hard enough making sure people turn up at Court let alone at a Marae), there would be benefit in some cases being dealt with at the Marae. But would these be the simple ones or the difficult, entrenched offenders? Would the young persons be Maori and Pacific Island, or everyone? We need to debate all this.

[3.9] A recent edition of "Court in the Act", Andrew Becroft's newsletter, co-ordinated for the Youth Justice community, referred to the concept of "Teen Courts" as being voluntary courts aimed at ten-to-fifteen year old offenders charged with less serious offences[23]. The editor says that research shows mixed results for Teen Courts in the United States of America but overall teen offenders judged by their peers were, he says "left with improved attitudes towards the criminal justice system as a result of their Teen Court experience". The article prompted a respected and long-term Judge, Russell Callander, to remind present judges that he conducted a Teen Court in South Auckland in 1987 and wrote up the results. He researched and set up a Teen Court to deal specifically with four young Maori school boys from St Stephens Maori Boys College. They had taken a car in 1987 from a neighbouring farmer and driven into Queen Victoria Maori Girls College in Auckland to meet some young ladies. None of the four young schoolboys re-offended after the Teen Court – judgment by peers – approach. One of the boys is now a highly regarded officer in the armed services. The three others are doing well. It is Russell's belief that peer pressure (both positive and negative) was a hugely powerful factor influencing the lives of these four young people[24].

[3.10] Russell sent his report on his Teen Court experience to Wellington. The concept was evaluated by a Maori advisor to the Minister of Justice and was rejected as being contrary to tikanga Maori. This, to Russell, seemed at the time a little odd as the whole setup was Maori and the feedback he received from all involved was positive.

[3.11] There were defence and prosecution lawyers, a Judge and something of a jury (all teenagers). The Teen Court concept is spreading rapidly across America with 675 Teen Courts now in operation[25]. Russell suggests the Teen Court should deal only with the younger offenders and less serious crimes, and for now, that is probably right. They are formed on the basis that most young people commit offences that go largely undetected and grow out of their delinquency as they mature. A small number of young people do require the formal intervention of the legal process and, where this is necessary, the community should remain the primary resource. It is difficult to argue against the state responsibility to strengthen the home and the school and not expand the formal controls of prison/court. All young people need time and assistance to mature and grow out of the difficult adolescent years.

[3.12] An ongoing, frustrating problem with the Youth Court is the lack of will and resource to deal with the minority of young people who require secure oversight. Invariably two or three and sometimes more young people appearing on a Youth Court day are required to spend the following night or nights in a police cell while a bed is freed up in Youth Justice secure, North or South, adequate for their needs. There is a reluctance by Child Youth and Family to house these young people in a community facility such as a motel with appropriate “trackers” to ensure their safety. It is easier (and some Police believe there is also a message which is important to be given) to house these people in Police cells overnight, to come back before the Court the next day and the day after and, if necessary, the day after until a bed is found in a secure Youth Justice facility.

[3.13] For my part, if we are to use the Marae as our focus for the Youth Court, we could consider, at the same time, using some of those young people on the Marae as peers and involve them in the process. I see no reason to confine the ages, as Russell Callander suggests[26], to the younger offenders. In my view, if we are going to confine the ages, it should be fifteen and sixteen year olds, and their offences the more serious ones, and the difficulties and high needs these young people face the more entrenched and deep seated ones. Self-esteem is so important for young people. They are urged by their peers to smoke, take drugs, drink alcohol, to steal and burgle, and to be staunch and fight when necessary. It is difficult for a Judge, no matter how caring, considerate and (in his or her eyes) motivating he or she may be, to get through to young people in a formal Youth Court setup. That is how and why the Family Group Conference process is supposed to work. It is also why a Teen Court on the Marae might have some chance of success especially if the young person can spend time on the Marae between Court processes in the same way adults and first offenders carry out their community service

on the Marae under the watchful eye, at Hoani Waititi Marae in West Auckland, of Phil Paki and his fellow kaumatua and kuia with the whanau awhina marae diversion.

[3.14] An area urgently requiring attention in South and West Auckland (and in other parts of New Zealand, such as Wairoa and Hastings) is the area of youth gangs. I recently had to decide a case involving rival gangs from the centre and South of Auckland – from two Catholic-based schools and young people within them. The offending was violent. The "gangs" were church based! The behaviour and attitudes of the young people was anything *but* Christian. The offending was serious. With intent to commit grievous bodily harm caused grievous bodily harm – Section 188(1) *Crimes Act* 1961– carries a maximum of 14 years imprisonment. At the time of the offending the young person was 15½ and is now 17. Another Judge had ordered the trial take place in the Youth Court. I found the charges proved after what was set down as a five day hearing (it took four days). Disposition is proving to be a difficult task. The young man has been taken away by his family from the central Auckland school and is boarding at a school in South Auckland. His family is Tongan. The complainant's family is Samoan. The problems between the young men were not racially motivated. The families have had their own Restorative Justice Conference, of sorts. There was kissing and hugging in the back of the Court during the week's hearing. An informal restorative process continues.

[3.15] The High Court and the Court of Appeal, on appeal, would take a dim view of anything other than a relatively heavy prison sentence in terms of the tariff cases if I transfer sentence to the District Court, but there would not be one person in the country I expect, who would believe that this young offender will benefit from two to four years locked up in prison. My task will be to assist both young men and to calculate, clinically, what sentence will be acceptable to the Crown so they do not appeal to a High Court Judge who, if there is an appeal, would almost inevitably counter what I do as "too soft, manifestly inadequate". This young man drinks too much (he has the propensity to drink too much), and he gets angry – with or without alcohol. On the night of the assault he had not had much to drink which, in some ways, made the matter worse. What he did was to attack an already unconscious seventeen year old around the head with his fists and with full force kicks with heavy boots. The victim had been laid unconscious with a full force blow from behind with a large wooden object, with sufficient force to shatter his skull. The Police acknowledge that the young offender had no part in the first smack on the head with the wood and did not know it was coming. The victim was lucky to survive, was in a coma for four weeks and, over one year after, is about to have part of his skull replaced - that part having been removed to allow his brain to swell.

[3.16] The young man has been removed from his peers. The peers at his current South Auckland school are providing positive role models. He is boarding. His parents were present in Court throughout the hearing. His family seem to require little or no external input. I may be wrong. Both parents work as bakers. They have other younger children.

[3.17] Many of those we see in Youth Court leave Court after their process is complete only to return to dysfunctional family situations where nothing is done by the state to assist. In my former role for twenty years as District Inspector of Mental Health in South Auckland, I used to see frustrations, and feel them myself, when people with severe mental health problems, exacerbated by drug and alcohol use, would detox in our secure units at Te Aho Mai, in South Auckland, become well, go home, only to return to Te Aho Mai a week or two later, worse than when they had first entered the hospital because the families to which they were returned had little idea on what was a positive lifestyle for the people, allowing them, and often encouraging and joining them, to return to their old habits of substance and other abuses. The same thing happens with young people.

Multi-Systemic Therapy (MST)

[3.18] Around twenty years ago Columbia University and the University of South Carolina began running trials using MST as an intervention on juvenile offenders. They tested the intervention through follow-up data for an extended period involving over one thousand subjects. They conducted studies on young people who had alcohol and drug misuse issues and also youth convicted of sexual offences. Certain of the subjects had disability issues including mental health, intellectual disability, together with behavioural and emotional disorders. The results of the studies were positive. It was only after evaluations were complete that MST came to New Zealand. Attached, as **Appendix 1**, is part of the result of the Columbian study[27]. The study highlights the broad of individual risk and protective factors and the need for MSA to address a wide range of different variables – as you would expect with the nature of the human being.

[3.19] MST is an intensive family and community based treatment addressing the multiple determinants of serious anti-social behaviour in young offenders. The approach (the multi-systemic approach) sees these young people as sitting within a complex network of interconnected systems covering individual, family and extra family (friends, school, neighbourhood) factors. Intervention is often required, not just with the individual, but with the family or the other areas.

[3.20] In New Zealand, it has been used to target the entrenched, chronic, violent or substance-abusing young offenders who are often, when the intervention starts, living outside the family home. The object is to get them back into a home which is functional.

[3.21] It is not only based on negatives i.e. the bad aspects of the “support network”. It also looks at the strengths of the young person’s environment. In other words there may be uncles and aunts, certain teachers or people at school, and certain friends who are positive and others who are seen as not so positive. The major goal of MST is to empower parents with the skills and resources to independently address the difficulties that we all encounter when raising teenagers and to give young people powers and skills to cope with family, friends, school issues. It is a home based model. Therapists have

low case loads and, hence, there are considerable expenses involved. The usual duration of MST treatment is between three and six months.

[3.22] The outcomes aimed for are the obvious ones – the chief one being the reduction of long-term rates of criminal offending in serious young offenders. This involves, also, a reduction of out of home placements for these young people and an improvement in family functioning and reduction of mental health issues through removal of pressures and strengthening of the young person, family, and support systems. The other outcomes sought link in with this chief one.

[3.23] Richmond Fellowship is a mental health and disability provider based in Christchurch. MST NZ Ltd is a limited liability company owned by Richmond Fellowship. I am on the Board of both. MST provides training for teams. The training is crucial. Special techniques are used to assess what will work for particular individuals and supports. A plan is devised in collaboration with family members. The plan is family driven. The multiple therapist family contacts occur at least once a week and often more. Obvious examples of what happens are the removal of offenders from deviant peer groups, developing an indigenous support network for the family, removing barriers to service access (simple if the service is in the home). I was on the Board which brought MST to New Zealand (and to Australia). It was not a difficult exercise selling the MST concept to people such as Andrew Becroft, although the cost of the teams and the intensive work they undertake and carry out has proved a negative factor for funding agencies of justice, welfare and health. In each case taken, at the outset, MST summarises what they see as the risk and protective factors with an individual's family, peers, school, neighbourhood and community. These factors are those taken from American examples. In New Zealand we have added into the frame the obvious, in Auckland in particular, Maori and Pacific Island factors including factors of culture, tradition and religion.

[3.24] The impression I have from the United States of America is that black youths in trouble outnumber white proportionately to total population in the same way the number of Maori youth offenders appear to outnumber non-Maori (proportionately) - especially in the Auckland courts. MST has been equally effective with Maori families as with non-Maori families and with older as well as younger offenders. It has, as its basis, an underlying principle that human beings are essentially decent and if the family want children to be at home with them that is a crucial starting point. The success rate has been high but a proper evaluation is possibly some years down the track and when those who were treated some five or six years ago have reached their mid-twenties. Specific strengths and weaknesses of individuals and supports vary widely from family to family. The frequent goal of treatment is to decrease a young person's involvement with substance abuse, tagging, thieving, violent offending and to increase association with groups such as kapa haka, church and sports. There are nine core principles of MST, the first eight geared towards getting to the ninth which is that all interventions are designed to promote the long-term maintenance of therapeutic change by empowering

caregivers and others to address family members' needs. Our thinking, currently as the MST Board, is that MST is more effective the younger the child – e.g. seven to fourteen year olds rather than fifteen to eighteen.

[3.25] As far as cost is concerned, the potential savings in the long-term are evident, but, it is the nature of most politicians only to see the cost in the short-term as it is them, today, who have to find the money to fund the intervention. There is infighting amongst welfare, justice and health as to who should provide the money. A ridiculous debate. All three should contribute.

[3.26] Most Judges sitting in the Youth Court (let alone in other Courts) know little or nothing about MST. Youth Horizons[28] recently launched its fourth MST team. It is incumbent on those who support the concept of MST to spread the word and to keep pressure on those who have the money and power in Wellington, to ensure the services of MST are available especially with those offenders in the Youth Court with chronic and high needs.

[3.27] Reliable statistics support Andrew Becroft's contention that 5% to 15% of New Zealand's young offenders commit 40% to 60% of offences[29]. The 5% of serious hard-core offenders are seen as 85% male, 70% to 80% with drug and/or alcohol problems, 70% not at school (not even engaged with a school i.e. not enrolled and not attending), family dysfunction and disadvantage, lack of positive male role models. I have an impression, from my work in the Youth Court, that a significant number of those young people appear to suffer from a degree of conduct disorder and little victim empathy. These and others often have a specific learning disability. At Waitakere, 50% at least are Maori and in some areas that rate goes up to 90%[30]. Many have a history of abuse and neglect and previous involvement with Child Youth & Family Services. In the words of Andrew Becroft, the challenge for the Youth Court is "how to influence aggressive, impulsive, truanting teenage boys (disproportionately Maori) often alcohol and/or drug dependent and who have personality disorders from disadvantaged and dysfunctional families with anti-social friends"[31].

Youth Offending Teams (YOTs)

[3.28] There is plenty of scope in New Zealand for YOTs to take a case management approach for the most serious offenders – say for the top ten or twenty in any one area. This does not happen as it could and should. There is scope here for expansion of the YOT's activities. Our December, 2006 YOT, in Waitakere, was attended by one person from the Police, two from Health (CAMHS), one from Ministry of Education, none from Ministry of Justice, one from SAFE (sex crimes) and one from CAYAD (substance abuse). The YOT head gathered useful statistical information on our 'patch', had run a planning day and had targeted four local primary schools for tailored intervention inclusive programmes. The statistics produced by the YOT are particularly useful as a guide to how we are all doing in the ongoing battle to reduce offending. All YOTs have budgets and guidelines on how they operate and what they do. In my mind, however,

there is a question mark over their effectiveness and the support they have from on high. They are an existing supported entity which could provide much more for our youth than they presently do.

[3.29] The English YOTs have a fully operational focus with a budget to provide services. They are multi-disciplinary specialist teams. The Youth Courts in England move as soon as possible to have cases taken out of the Youth Court and put under intensive YOT supervision and surveillance programmes. There are, in fact, many ideas used in England which, for a variety of reasons, might be useful, here, including ankle bracelets for people remanded on bail to their own homes to avoid remands in Police cells as an alternative to Police cell remands[32]. The impression I have is that England has a stronger, better organised system. When I was working in London (30 years ago!) there were clear systems in place in the various Courts with books setting out guidelines, defined officers, people, and supports. The evidence from a visit in 2005 is that a similar organised structure still exists. In England, YOTs have a "minimum standards booklet" with clear directions and expectations for Youth Justice social workers to adhere to at all stages of the process. They also have a Youth Improvement Programme where the potentially fifty worst offenders in the sixty most socially deprived areas in England are targeted as a preventative measure[33]. This is certainly something we could implement here.

[3.30] England also has parenting orders directing parents to obtain counselling and assistance to improve parenting skills, while in our Courts, apart from a brief introduction to the parents or support (when it is there) in Court, there is no ongoing contact or commitment from parents in the Court forum. Our Family Group Conference process, for youngsters with high needs, is generally far too superficial and the plans resulting from social workers' reports can also be superficial and frequently fail, adequately, to recognise and address the special needs of the minority of high needs offenders – requiring ongoing constructive interventionist help for drugs, alcohol, mental health and related problems.

[3.31] It has been said that a nation's treatment of its young offenders is a symbol of its strength and virtue[34] (Winston Churchill). The Young Offenders Serious Crimes Bill seeks to reduce the age of offenders who can be prosecuted in criminal courts from fourteen to twelve years of age. We have already had politicians react in a populist and punitive way by increasing sentences, through our *Crimes Act and Sentencing Act*, for a number of crimes based on the premise that sentence lengths and offending rates are somehow connected. At least there is now recognition that our jails are bursting to the point where Judges are being "told" not to lock so many people up. We have a dreadful habit in New Zealand of developing policy based on public opinion. One has only to read the local paper, particularly in Auckland over the last decade, and in particular the Letters to the Editor or some of the editorials, to realise that public opinion generally favours long sentences for people presumably on the basis that people are inherently

bad rather than inherently good. In my view 5%, i.e. one in twenty, are inherent rogues with the rest off the track for one reason or another, but salvageable.

[3.32] When dealing with young people, deterrents do not appear to be a strongly motivating factor. Young people do not appear to have the same established value systems and self control as most adults. Whether a young person will appear in the District Court, High Court or Youth Court is neither here nor there to a young person contemplating robbing an old lady of her handbag. The Youth Court has the potential to deliver a variety of helpful, in theory, options. Locking young people up earlier and for longer achieves nothing.

[3.33] For many years I have had had a working relationship with Dr John Newman. He has a background in paediatrics and general medicine and is now working with a youth psychiatrist, Dr Hugh Clarkson, in a small team in South-west Auckland involved with young people with serious mental health and related issues impacting on their ability to live properly. On a very much piece-meal basis I have engaged John and his team with people who have appeared before me and presented with possible mental/health/ personality/ psychological issues, those issues not being addressed, or, if addressed, addressed inadequately. Most of John's team's time is spent with young offenders locked up in the secure young person's facility at Weymouth in South Auckland. The team is inadequately financed and resourced but at least it exists. The team spoke recently with certain interested Judges but, as far as I am aware with my contacts with John, I am the only Judge in the Auckland area who refers cases to them, on any basis. I have referred five cases in the last six months – our Youth Court's highest needs cases. The result in two of those cases was good. With the other three, the team could have little impact because of their ages (sixteen - seventeen) and problems so entrenched that ongoing work over years was needed and not within John's brief.

[3.34] There is an acknowledged shortage of youth psychiatrists and psychologists in the Auckland area and certainly in South and West Auckland. There appears to be a lack of preparedness on behalf of the relevant authorities to bolster this area of support for the Court. There is in fact a general lack of cohesion and management. Any referrals made from the Court by a Judge, or through the Court process, are piece-meal, haphazard, inconsistent, and rare. I am prepared to phone John and his team, or Odyssey House or CADS, during a break from Court to enquire as to services or arrange assessments – but that is not how it should be.

[3.35] Ten months ago I case managed a seventeen year old through the District Court process. Charged with aggravated robbery, Richard Taka had never before been offered residential alcohol rehabilitation despite his addiction since early teens and three or four years through the Youth Court. I arranged for him to go to Odyssey House on the basis that if he could stay there for a year or more this would effectively be time served. The Crown supported the proposal. All involved crossed their fingers and hoped that Richard, against the odds, would succeed. He stayed, in all, for four months

during which time he absconded twice and was taken back. I visited him there twice. Odyssey finally gave up on him and I had no choice but to imprison him for two years with leave to apply for home detention (not applied for). We have kept in touch since. He learnt an enormous amount in his four months at Odyssey which is not only helping him in his time in prison but is also, through him, influencing his family including his younger siblings who, by the time he went to prison, were already abusing substances and on the Youth Court treadmill.

[3.36] There are huge improvements still waiting to be implemented in the Youth Court. I have confidence in Andrew Becroft and his energy and choice of Youth Court Judges as far as implementation of ideas is concerned. If I had to put a percentage on the way the Youth Court is functioning currently, I would have it at around 40%. I say this because it works but it works below par in my view. The capacity to improve by around 60% highlights the gaps currently existing in the services presently offered to our young people with particular difficulties. Our Court and support system is geared to the 'adolescent limited' 'low risk' young offender who will cease offending with minimal intervention. We know what interventions are required for the persistent young offender with a range of personal, family and social problems. Forearmed is forewarned. We must arm our Courts with ready access to what the persistent offenders require, to reduce their risk of re-offending.

Melbourne, Victoria - Bail Programme

[3.37] Jelena Popovic is the Melbourne Magistrate responsible for starting and running specialist Courts in Melbourne, including their "Bail Court" [35]. Our Chief Judge, Russell Johnson, has been to Melbourne to look at what they are doing there. He has told me that he "would not stand in the way of our developing something like that if it fits with our legal structure".

[3.38] In true Australian form, they are not keen in Victoria on the labelling of what they do under the heading "therapeutic jurisprudence" ("TJ"). Jelena Popovic told me that TJ has a poor public relations image (the expression) and appears to be a "flashy name" given to a common sense, responsive approach to dealing with modern sentencing dilemmas. The basis of their Courts is similar to our Waitakere philosophy with Family Violence, namely that the traditional notions of punishment, retribution and deterrence are underwritten these days by the primary concern of sentencing which is for the safety of the community served through rehabilitation and addressing issues which have led to offending.

[3.39] The Melbourne initiatives recognise the importance of judicial supervision of offenders as being the "crux of the modern approach to sentencing". The rationale that they have for judicial supervision is the same as ours i.e. motivation sustained prior to sentence with sentence delay providing an opportunity for appropriate assessment and formulation of a "plan". The sentencer has time to gather information over a period of

time and gains confidence that therapeutic disposition, ultimately imposed, will be successful. Time is used as a gauge to monitor progress and change in behaviour.

[3.40] The Victorian *Bail Act* 1977 (Vic) permits the imposition of conditions of bail (as our does):

- to ensure the attendance of the alleged offender at Court;
- to prevent further offending whilst on bail.

[3.41] Over the years the lower Victorian Courts have recognised that there were many offenders who should have been bailed but were not because they did not have a place to go, had no one to support them, and all they would do is return to the streets and their drug and alcohol habits, if bailed. The Bail Advocacy Service started in January 2001, was set up by the courts system and run by community groups with an interest in improving the delivery of justice to the needy in Victoria. They interview and assess bail applicants, provide advice and detailed plans of culmination of treatment and support, initiate linkages and access to Mental Health services, disability services and drug treatment agencies, and provide advocacy and education.

[3.42] Examples of success stories have come from the Victorian system along the lines of what could be expected. One example is of a young refugee from the Horn of Africa, developing problematic behaviour and drug use and involvement with a gang[36]. The Bail Service, in conjunction with the Juvenile Justice Liaison Service, became involved, found a bed for him at a hostel for males awaiting residential drug rehabilitation, and bail was set with strict conditions for the offender to attend medical and drug rehabilitation appointments. He was supervised on bail by the bail co-ordinator and Juvenile Justice Liaison officer. He stopped drug use, found a job, and became a mentor. He received, in the end, a suspended sentence.

[3.43] An evaluation of what they are doing in Melbourne suggests a significant decrease in re-offending whilst on bail and genuine motivation by offenders to improve themselves and their positions in society[37].

[3.44] We would like to copy the Victorian model, at Waitakere. A problem is financing and receiving the support structure required. While encouraged by Head Office to be innovative, we are asked to go it alone. It takes someone of the calibre of Judge John Walker, who set up the Christchurch Drug Court, to ensure there is support in a tangible way for schemes which go beyond normal judging. Judge Stan Thorburn has the necessary mana to drag the powers that be with him and obtain the resources required for his planned Auckland Drug Court. At Waitakere, our equivalent to these two, is Judge Heemi Taumaunu. I see my role as sparking the changes, with Heemi gathering the resources and support for what, in our view, is such an obviously sound scheme and one which fits not only with our *Bail Act* 2000 (NZ) but with our general philosophy at Waitakere which follows the TJ line.

4. FAMILY VIOLENCE – HOW THE WAITAKERE PILOT WORKS

[4.1] Family violence ("FV") is an age-old societal issue. To read some of the recent and not so recent material would suggest that it is something peculiar to this society and resulting primarily from the use and abuse of "P". I would dispute that view. What is perhaps newish is the idea that traditional policing and court approaches to family violence are ineffective in combating the violence and changing the behaviours of perpetrators. The media's role in highlighting FV has been both positive and negative. Shaming of perpetrators of violence within the home can be a good thing, however one of my cases from last year, involving an All Black rugby player, led to the media then, and on an ongoing basis, labelling the offender as a "wife beater", despite the facts clearly illustrating that what he did was pull his pregnant wife back to the family home against her will. She was walking away from the house late at night in her night-clothes after an argument. Although not conceded at the time, it is likely he hit her once with a closed fist. An examination showed no bruising or marks. The incident was reported to the police by a neighbour who was watching.

[4.2] Our FV Court cap is around forty each Wednesday. Around thirty-five of those cases are first time appearances in Court (not necessarily first time offending – first time in Court) - one or two hits or slaps, or pushing or shoving, often fuelled by alcohol and generally with a history of angry outbursts. These people could not be described as wife beaters but it is right and proper that they be held accountable by their partners, the Police, the Courts and, at times, by the media. It is frustrating to have what we are trying to achieve in the Family Violence Court in Waitakere, inadequately and mischievously reported by the media, leading to misunderstanding by the public.

[4.3] What I did in the 'All Black' case I have done many times before and since (bar the name suppression). The offender had the spotlight on him and his family. The family was religious, of Pacific Island origin. They had young children. The victim was pregnant. Following the incident there was a short period apart followed by counselling for each individual and the couple together. There was family and church support. There was little support from within the rugby community, which distanced itself somewhat from what was happening. The Auckland Rugby Union dispensed with the All Black's services. He ended up playing in the provinces. To be fair, following the incident, the All Black's game deteriorated but in recent months it has blossomed and he is back in All Black colours, in the Auckland NPC team and the Blues. Issues of anger were addressed and after some months he was discharged without conviction, and non-publication of any details relating to the case was made permanent.

[4.4] There are national guidelines on FV[38]. They are geared towards trying to ensure consistency for people working in the area. The guidelines were drawn up under the umbrella of Standards New Zealand and are being used by Police, Child Youth & Family, teachers, physical and mental health workers, GP's and social workers. The object is to identify risk on a combined approach basis. The guidelines were contained in a ninety page document.

[4.5] In 2005 the New Zealand Police recorded more than sixty thousand domestic violence incidents over the country with more than sixty two thousand children or young people under the age of seventeen present or involved in some capacity, during FV incidents. In 2005, twenty nine murders were FV related[39].

[4.6] Through use of the Pol 400 Form (a New Zealand police recording system of family violence reports) and good communication with community groups such as Viviana and other groups co-ordinated by WAVES (Waitakere Anti-Violence Essential Services), Police and community support workers accurately advise Judges in every one of the forty to fifty FV cases on Wednesdays, what previous callouts there have been, the result of the callouts, and a detailed history of violence within certain families. Around 30% of the callouts result in charges being laid because of the severity or ongoing nature of the offending. Victims in our area, generally women, are more and more prepared to report FV to the Police in the knowledge that such reporting will not automatically result in their partners being removed from the home on an ongoing basis or being locked up in prison, or being fined sums of money better spent on the family. An evaluation of the FV Court in Waitakere is due to be released in April this year. It is clear from my meetings with focus groups involved with that evaluation that there is confidence in the Police and the Court in the West Auckland area to deal appropriately and realistically with family violence. Statistics from local Police suggest callouts are increasing. My belief, unsubstantiated yet, is that this increase reflects confidence in the Police and the Court approach we are taking to FV.

[4.7] Despite hiccups over the past four years, the FV Court in Waitakere is now flourishing. The four resident Judges sing from the same song book. The hiccups include an ongoing perceived lack of support – tangible and intangible – from the Justice Ministry. The recent FV Court evaluation has had to be arranged by me on an informal basis. I arranged with some people I met at a therapeutic jurisprudence conference in Paris in 2005 to carry out the evaluation through the use of a Masters student from Massey University, in Palmerston North. Her supervisors, both with doctorates in psychology, were at the conference to present Family Violence papers, as I was. The Chief Judge approved the evaluation but told me there was no Ministry money to pay for it. The student texted me in August last year to say she had been told by the Minister of Justice to stop work as the Ministry was carrying out an evaluation. Thankfully there has been partial resolution and the student, Sarah McGray, has continued to work but has been hamstrung to an extent through lack of financial support. The government is now in the process of carrying out a formal evaluation of the Manukau Family Violence Court. That evaluation will, of course, be funded through the Ministry of Justice.

[4.8] Without an evaluation it is difficult to justify what we are trying to do within the process. We had developed a protocol with the leadership of community group WAVES over a lengthy period of time but there was no follow-up through evaluation. The former Chief Judge's attitude to our Court was ambiguous to say the least. He took a seminar through the country in 2005 (for Judges) on FV on the basis that there needed to be

more efficiency and speedy disposal of FV cases to ensure, as far as possible, accountability of offenders - Judges were told to be tough on FV and that there was no place for leniency in the form of discharges without conviction even if this was the carrot required to obtain a guilty plea from an offender reluctant to plead guilty with a conviction following.

[4.9] It is rare, but it happens, that we discharge without conviction someone who has carried out an anger management course over twenty weeks, followed through with a CADS (drug and alcohol dependency) assessment and treatment for drugs and alcohol, and where the offending is at the lower end of the scale and the indication of a s.106 discharge without conviction was the carrot leading to a guilty plea[40]. It is rare to find a Judge, outside the FV pilot Courts, who will reduce a male assault female charge to a *Crimes Act* assault charge to get a guilty plea, as the judiciary and the Police prefer that FV offenders' records accurately record the FV nature of their violence. This approach, which often leads to defended hearings, fails to recognise that 85% of defended cases result in acquittal[41] and most offenders genuinely want to accept accountability and improve themselves and their relationships. Each Court in the country is given a goal of two-four-six disposal period - plea within two weeks, sentencing four weeks later, and for defended hearing and final disposition six weeks after that (from go to whoa, twelve weeks).

[4.10] The four Judges at Waitakere have achieved consistency of approach over the last three years. We have also been able to rotate the Court through the three summary Judges Tremewan, Taumaunu, Recordon, and have developed some certain specialisation and expertise within the Police prosecutions department. We also have community groups in Court - victim support, Maori victim support, victim advisor from within the Court, Salvation Army, Probation, Man Alive (preventing violence (for men) group), and a bar which, while not all supportive of what we are doing, works with us in trying to achieve what is not being achieved in most other parts of the country.

[4.11] Waitakere is supposed to be the "show pony" of FV Courts. Our disposal period currently for defended cases is, however, more than sixteen weeks. The timeframe goal is impossible at Waitakere but it is achieved in most other parts of the country. For the usual reasons, bruises healing and monetary implications of losing a spouse or partner sinking in, complainants are often reluctant to give evidence against their abusive partner after a lengthy period of time. Twelve weeks is sufficient time for bruises to heal, children to be screaming in the home without a father, and all the usual reasons for reluctant complainants coming up to brief in Court.

[4.12] An ongoing concern, for the local Judges, is the ability of community support groups to help the high needs FV offenders. At Waitakere, the Court relies totally on community support groups. Funding of those groups is marginal - Man Alive have recently had problems. If we were to lose their services our Court could not function. The Probation service in West Auckland could not cope with what happens in Manukau, which is that specialist courses such as drug and alcohol or anger management are

ordered under supervision by Probation, with the Probation service picking up the tab. At a recent focus meeting it was clear that Man Alive could not function on the amount of money that individuals pay for a twenty week group course or a twelve week one-on-one course. They get more money from Probation and considerably more from an order by the Family Court following the making of a protection order. Ministry of Justice statistics suggest our disposal rates are too slow as far as FV is concerned simply because we monitor through our Courts to ensure that offenders attend courses. Unless they are working we bring offenders back to Court on a six or so week basis and find out how they are getting on with their courses, whether it be anger management or drugs and alcohol, counselling. They tell me, and those sitting at the back waiting for their cases to be called, what they are doing and how they are finding their courses. The majority are extremely, and in my view, genuinely, positive and thankful to be following the path they are on.

[4.13] Man Alive and other community support groups offering anger management, work well for our population. Our drug and alcohol assessments and follow-up work less well. Certificates are produced to the Court by the people who have gone for assessment, but the assessments are generally based on self-reporting and there are many who do not undertake and complete programmes that they should undertake, or there are lengthy delays in course commencement – not a good thing when dependency can lead too easily to further offending.

[4.14] Our goal is that our Family Violence Court obtains formal recognition from the Ministry of Justice as a specialist therapeutic Court moving away completely from the traditional adversarial Court. Two years ago I attended a Judges' seminar over two days on therapeutic jurisprudence and made the comment at the end, when we were asked for our views, that looking around the room we were preaching to the converted. Only twelve Judges attended the seminar. Five were Family Court Judges, seven were women and four of the male Judges present (six if you included two of the presenters) had beards!

[4.15] I attended last year's equivalent course in September and was gratified to see a wider cross section of judges. Cost-cutting meant that David Wexler was not invited this time from the United States but Jelena Popovic attended and advocated for TJ and specialist Courts such as our FV Court.

Therapeutic Jurisprudence (TJ)

[4.16] Therapeutic jurisprudence critically examines legal systems and what is happening, and asks whether the systems work and if not why not, and if yes, why? Specialist Courts have been developed in the United States with a view to solving problems in collaboration with offenders, victims and community interest groups (including of course the Police). At the Waitakere Court, certain lawyers who are unused to our westie FV ways, turn up to Wednesday Family Violence Court and insist their clients enter not guilty pleas, figuring that the odds are against the victim giving evidence

at a delayed defended hearing. When this happens in our Court, we simply turn to the defendant and ask "why defend?". "Why, when the evidence is clear and you are an ongoing time bomb with your anger and alcohol issues, are you going to defend this case? The reports suggest you have problems with alcohol, drugs, and anger. What will you get out of a not guilty plea other than a not guilty verdict? Do you want to improve your behaviour? Do you want your relationship to work? Do you want future relationships to go the way of this one because of things you can change?" We are armed, at this stage, with charge sheet, information, summary of facts, one or more victim impact statements, history of offending including unreported domestic callouts.

[4.17] It is surprising how often the answer is " yeah – there are issues – I am a bit of a prick when I drink - my lawyer told me to defend the matter because the missus won't give evidence against me".

[4.18] A seminar for the judiciary I attended in October 2005, was led by American jurist, David Wexler, who presented at the Paris conference last year and has, with others here such as Professor Warren Brookbanks, become a valuable source of information on therapeutic jurisprudence and international developments in the field.

[4.19] TJ, as applied by us in our Family Violence court at Waitakere, focuses on the offender initially, the first priority (after ensuring the victim is safe) being improving the abuser's behaviour – drugs, alcohol, anger. The focus gradually moves to the family as a unit with the provision of support and services. Our methods are somewhat crude and haphazard given the lack of time and resource available for each case but we do the best we can with the limited expertise we have.

Family Violence – Alcohol & Drugs

[4.20] Agreement by a perpetrator of FV, to attend the Bridge programme run by the Salvation Army, Odyssey House for substance abuse issues, or the local drug and alcohol assessment unit, CADS, is an important step. There is often an unwillingness by offenders to accept that there is anything but normality in the way they drink or take illegal drugs.

[4.21] About 460 million litres of alcoholic beverages were consumed in New Zealand in the year ending June 2005. There was a reduction in the consumption of alcohol prior to the beginning of the new millennium but over the last five years consumption has again increased[42].

[4.22] The most commonly reported consequence of a person's drinking is a hangover (51% men, 33% women) – 10% of males reported physical assault as a problem experienced due to other people's drinking – 11% of women reported sexual harassment as a problem experienced as a result of someone else's drinking. In 2004 there were 320 deaths where the underlying cause of death was an alcohol-related condition[43].

[4.23] When asking for information and statistics on drugs and alcohol from the Ministry of Justice, by far the most accurate, up-to-date and best statistics involved cannabis "as a public health issue" (as opposed to alcohol). The evidence in our Waitakere Family Violence Court is that marijuana, while it presents its own problems including its effect on people with mental health issues, is way below alcohol as the main cause of family violence. "P" is fast becoming a major issue but currently alcohol "leads" by 8:1 (8 alcohol, 1 'other')[44].

5. "P" (CRYSTAL METHAMPHETAMINE)

[5.1] On 26 May this year, six people were arrested on drugs and firearms charges after Police seized drugs imported on container ships from China to Auckland with a street value of NZ$135 million – the largest ever haul of methamphetamine in New Zealand. The haul included ninety six 1kg bags of crystal methamphetamine ("P", "Ice" or "Burn") worth NZ$1 million each and equivalent to a million doses of the drug – and 150kg of pseudoephedrine, the main ingredient in manufacturing "P" and worth NZ$40 million. The previous largest haul of crystal methamphetamine was just over 8kg found in Wellington (after arriving through the Port of Auckland). There is evidence that the drugs were not in transit but were intended for distribution in the New Zealand market place[45].

[5.2] For the last two years I have been in close contact with Hapai Te Hauora Tapui[46] through Te Rehia Manning on the issue of "P" (and other drugs) in prisons. Te Rehia is the CAYAD co-ordinator with an emphasis on Maori chronic alcohol and drug related problems. I have also met, at their request, with the heads of police from Auckland Central and Waitemata Mental Health together with Sandy Barry, an Auckland lawyer and District Inspector of Mental Health, to discuss the problems of the effects of methamphetamine on people with a predisposition to mental health issues and with a particular emphasis on mental health acute units being used as detox for these people, for anything from seven to twenty one days, and the resulting dangers to staff and fellow patients through this "detox". The Police and Courts are being asked to participate, increasingly, following assaults and damage within the acute mental health units. Mental health heads consider the Courts and the Police are not holding patients accountable when asked to participate in the accountability process – the Police, because they are too busy and want convictions, and the Courts, because they consider being held under compulsory care shifts the responsibility to the hospital.

[5.3] Maori offending, linked with drug and alcohol issues justifies a paper in itself. I have simply incorporated Maori into the general thrust of submissions, suggestions and data recorded here. It is important to note, however, that as with Pacific Island, Asian and other minority groups living in Aotearoa, Maori present with special issues e.g. 80% of Maori surveyed consumed alcohol in the past twelve months[47].

[5.4] My experience and understanding of "P", as a lawyer and as a District Inspector in mental health, where I came across many "P" users in the Tiaho Mai South Auckland

Mental Health Acute Unit, is that chronic abuse produces a psychosis similar to schizophrenia and is often characterised by paranoia, self-absorption and auditory and visual hallucinations. For some heavy users violent behaviour is exacerbated. The most dangerous stage of the binge cycle is known as “tweaking”. Typically, during this stage the drug user has not slept for a number of days, can be extremely irritable and paranoid. The tweaker craves “P” and no matter how much they take they can generally not create the high of the earlier days. They can become frustrated and unpredictable and the potential for violence increases.

[5.5] Our detox services are currently ill-equipped to deal with those dangerously and adversely affected by “P” and at the “tweaking” stage. The statistics of those affected[48] without doubt bear out the need for specialist treatment services. While it is clear there is a large group requiring specialist services, there is not enough information on what constitutes effective treatment, hence, perhaps, the lack of effective treatment centres. It is not surprising, therefore, that more and more of these people within the Mental Health systems are acting out and ending up in Court. We are asked to deal with them as “regular offenders” and must, to an extent, follow the advice of the experts in this regard.

[5.6] “P” users present in Court reasonably regularly. Those at the tweaking stage probably appear once or twice a week in our Court at Waitakere. They generally end up in the special unit at the remand prison in Mt Eden where they are monitored and allowed to detox under the watchful eye of forensic liaison people including a psychiatrist, or in some cases they return to Mental Health acute units.

[5.7] The report on amphetamine use, literature review and recommendations for intervention, prepared by the Regional Alcohol and Drug Services 2002, advised then that it was very clear the public wanted more “P” specific information relevant to New Zealand[49]. The two main resources recommended in the report do not cover all relevant information, and only one is New Zealand-produced. The report confirms the central role that methamphetamine now plays in the New Zealand crime and drug scene.

[5.8] The Methamphetamine Action Plan 2003[50] was designed to be a guide for agencies and the progress of this document was to be monitored by the ministerial committee on drug policy. Improving public health and education drug resources with improved information on methamphetamine was one of the proposed actions from recommendations. This has not happened. The continued lack of acceptable resources appropriate to the community has led directly or indirectly to the formation by community groups including groups of families affected by the use of "P" by family members, of the Methamphetamine National Education and Resource Unit which is made up of members from the community affected by methamphetamine and frustrated at the inadequate response to their needs. Groups have marched on parliament and meet regularly, often involving families of those suffering from the effects of methamphetamine use.

[5.9] I was asked last year to speak to a group at the University of Auckland on how I saw "P" from the bench[51]. I gathered statistics through the resources available to the judiciary and presented those together with case studies. There was a positive reaction by those there to what I said, but no visible follow-up by justice or health officials. My perception is that the issue is seen by most as an issue for the Police, the Courts and punishment rather than as a health and social issue requiring involvement of the government and local agencies to set up detox and other specialist treatment centres. There is certainly nothing obviously available to us at District Court level other than the remand centre, for detox or ongoing treatment.

[5.10] A "P" user, committing burglaries to fund his or her habits, will frequently appear in Court facing fifty or more burglaries along with drug offences. Each one of these burglaries is a separate charge, which somewhat muddies the statistics of offending when statistics attempt to analyse cause/effect.

[5.11] Te Rehia told me recently of a family member of a family who was admitted into an Auckland drug and alcohol rehabilitation service, to be treated for methamphetamine abuse over the last three or four months, and whose parents believed the service's "policy processes" were responsible for their son's suicide. She has suggested that available information leads to the inevitable conclusion of the importance to design policies and programmes that both build young peoples' capacity to resist risk factors and enhance protective factors, and that services need to be consistent with what was known about the development of young people in particular and any intervention or treatment should help young drug abusers reconnect with families, peers, school (if school age), or work.

[5.12] The attitude of the Police to "P" is to publish, in every opposition to bail where "P" is involved, a blurb as follows:

> *"Methamphetamine is classified as a Class "A" controlled drug.*
>
> *In the past cut Methamphetamine has been popular in New Zealand within a large number of different social groups.*
>
> *Over the past five years however, there has been a dramatic shift in market demand for high purity Methamphetamine. This form of the drug is more commonly known as "Pure", "P" or "Burn".*
>
> *Methamphetamine can be used in a number of ways, however "Pure" Methamphetamine is generally smoked.*
>
> *Specially designed glass Methamphetamine pipes are used to smoke "Pure" Methamphetamine.*
>
> *The effects of Methamphetamine use include euphoria, increased energy, hyperactivity, extended wakefulness, restlessness, dizziness, reduced appetite, increased heart rate, insomnia and confusion.*

> *The effects of Methamphetamine use can last for between six to twelve hours.*
>
> *Long term effects of using Methamphetamine may include high blood pressure, irregular heart beat, anxiety, irritability, paranoia, decreased emotional control leading to aggressiveness and violent behaviour. Feelings of distress and panic may occur if the drug is unavailable.*
>
> *There is a high potential for dependence on this drug because users often experience a crash when the effect of the drug wears off. Tolerance develops quickly, with users having to take more and more of the drug to achieve the same results.*
>
> *The most common form of Methamphetamine at present, particularly in Auckland, is pure Methamphetamine, known as Pure or "P"."*

[5.13] Possession of methamphetamine, or of the pipe to consume or inhale methamphetamine, is usually treated by the Courts by way of a fine for a first offence. For a second or subsequent offence our Waitakere practice is, generally, to order an assessment with CADS or another community agency but these are generally inadequate or can be inadequate, in working out who has a problem and who does not have a problem. The issue then, for me and for the agency, is how best to treat a person if they are not willing to be involved in the process. When the charge is only possession of "P" or a pipe, which carries a maximum one year imprisonment, there is not much of a big stick to wield.

[5.14] Of more use is the stick when "P" use comes to notice through multiple burglaries carried out to fuel "P" use. The problem there is that most of these people are held in custody. A small minority will have counsel able and willing to contact and engage with a residential rehabilitation centre where offenders can be bailed directly from the Court. There is often a waiting list for entry and a certain unwillingness to take these people, bailed from the Court, ostensibly consenting but in fact under pressure. They have enough problems with non-offender addicts, let alone potential trouble-makers from the Court.

6. REHABILITATIVE PROGRAMMES IN PRISONS

[6.1] Ideally, the primary purpose of prison, at all stages, would be the reduction of re-offending. Prison remand periods vary from a few days to six weeks and longer. I visited Auckland Central Remand recently, with Te Rehia Manning. We met with the Remand Manager, Mack Herewini, and with the resident doctor, and discussed the twelve step programme they offer, including a drug education component. About 10% of prisoners coming through the remand centre take advantage of the twelve step programme which is not and cannot be compulsory.

[6.2] Some six months ago I wrote to the Corrections Department, in Auckland, concerned with the apparent dearth of substance abuse programmes offered within the sentenced prisoner forum in the Auckland area, requesting details of what was available.

A partial response came from the Northern Regional office at Paremoremo, with a note that a full response needed to come from the Department of Corrections' national office in Wellington and that a request had been made for them to respond directly to me in that regard. I received no response. The unanswered questions were "*What improvements or changes to the courses/programmes or the delivery are being considered?*" and "*Are you aware of, or have you modelled your courses/programmes on any overseas courses/ programmes? If so, what were they? Any references to overseas material?*"

[6.3] Some of what they did give me was useful. I asked "*What are the courses/programmes for drug and alcohol programmes provided to prisoners in the Northern region public prisons?*". The response was:

> *"Currently in the Northern Region the following programmes in respect of Drug and Alcohol are provided to selected prisoners:*
>
> - *100 Hour Substance Abuse Criminogenic programme (which maybe substituted by the 100 Hour Criminogenic Mixed Programme from time to time). Both of these are nationally designed programmes run in each of the five Public Prisons regions. Currently the programmes are provided to prisoners accommodated at Auckland Prison and Northern Region Corrections Facility.*
>
> - *12 Step Programme at Auckland Central Remand Prison run over 9 hours covering a wide spectrum of aims around alcohol and drug addiction. This includes education, communication, dependency, problem solving, relapse strategies, and treatment options.*
>
> - *Waitemata District Health Board Community and Drug & Alcohol Services Programme provided at Auckland and Mt Eden Prisons. This is run over 12 hours and covers a very similar agenda to the 12 Step programme already mentioned. It is run by Drug and Alcohol Counsellors from the District Health Board."*

[6.4] I asked "*Who are they offered to? eg remand or long term prisoners"*:

> *"Public Prisons Services (PPS) operates the Integrated Offender Management (IOM) system, key features of which include a sentence plan for each sentenced prison tailored to address the needs of their individual offending.*
>
> *The sentence plan is produced following a detailed assessment of, amongst other things, the Criminogenic needs of each offender and what treatment and programmes will best suit that offender selected, from a suite of nationally designed programmes. For some offenders, the driving factors for the criminal behaviour are linked to Substance Abuse and more specifically alcohol and drugs.*

Part of the assessment process includes a determination of the offender's risks, needs and responsitivity level and this is used in conjunction with the offender's risk of reconviction and re-imprisonment to further tailor each sentenced prisoner's sentence plan.

For offenders where substance abuse is a prominent factor in their criminal behaviour there are a range of options to which they might be planned. Currently, this may include, for high risk sentenced offenders, attendance at the Alcohol and Drug Treatment Unit in Waikeria Prison. This delivers an intensive programme over a number of months based on one to one and group treatment therapy process. Other sentenced offenders with a lower risk of re-offending (but still considered a risk as regards reconviction and re-imprisonment) are provided with the 100 Hour Substance Abuse Programme in their sentence plans. It should be noted that many prisoners require to attend motivational programmes to accept responsibility for their offending before they attend either of the above two programmes.

PPS aims to deliver the programmes (where mentioned in the offender's sentence plan) by the 66% stage of the offender's sentence and timed to coincide with Parole Eligibility.

Remand Prisoners are not provided with the option of the two programmes mentioned above. IOM is a targeted, evidence and needs based system whereby, the Department targets its programmes funding at those sentenced prisoners with an identified need at higher risk of reconviction & re-imprisonment. For Remand Prisoners, the focus is on their living needs, maintaining a safe environment and taking advantage of opportunities provided to usefully use their time in prison. The Northern Region of Public Prisons does, however, apply funding from its budget to the 12 step and C.A.D.S. programmes for remand and lower risk sentenced prisoners.[52]"

[6.5] I asked "*How many prisoners undertake the courses/programmes? ie any statistics?*":

"Programme volumes for the 100 hour Substance Abuse Programme / Mixed programme in this region are set nationally at the start of each year based on anticipated and planned demand and funding that the Department of Corrections is provided with.

In the current year 2005/06, sixty six prisoners in the Northern region will have attended a programme.

In respect of the 12 Step programme provided to remand prisoners at Auckland Central Remand Prison, this programme is run on a continuous end to end basis as part of the Constructive Activities schedule and in 2005/06, some 96 remand prisoners will have attended.

The C.A.D.S. programme was an initiative commenced by the region in November 2005 under the guise of constructive activities and is intended to be

> *an end to end continuously running programme. Lower risk sentenced prisoners at Auckland Prison receive the programme and to date some sixty prisoners have attended. The region has just commenced running the programme at Mt Eden Mens' Prison for remand prisoners and anticipates by the end of the financial year on 30 June 2006 that some 90 prisoners between the two sites will have attended."*

[6.6] The statistics of 66 prisoners in the Northern region having attended the programme 2005-2006 is useful, but would be more useful if there were some context including specific information on the particular drug and alcohol issues of the 66 prisoners. Drug use in Paremoremo and Mt Eden is not as high as in some other prisons in the world – around 21% use drugs within the prisons and there has been a drop to 16% in Auckland Central Remand since Mack Herewini has taken over as the manager of the remand unit[53].

[6.7] We are told from time to time by the media and academics that we imprison more people in New Zealand than anywhere else in the western world other than The United States. Many of those in prison have a high drug and/or alcohol dependency. Effective rehabilitation programmes reduce the odds of people re-offending when released from prison. All programmes geared towards reducing re-offending need to be properly thought out and be as attractive to inmates as they must be to those in the community. They must have the support of the community. A high proportion of recidivist and often serious offenders are substance dependent. I have been unable to find an evaluation confirming that current drug and alcohol control programmes have led to a reduction in subsequent offending. Some programmes have been discredited and public confidence lost.

[6.8] The Department of Corrections has developed and tested a needs assessment procedure known as the Criminogenic Needs Inventory. Criminogenic needs are risk factors whose reduction is associated with reduced re-offending including reduced re-imprisonment. It is accepted that many of the factors that adversely affect an adult are set in place by adulthood, such as antisocial personality and behaviour, but there is a group of adult risk factors that can be changed and improved including drug and/or alcohol dependence.

[6.9] The current gap between the funded supply and demand for alcohol and drug treatment for offenders in the Corrections systems is estimated at around NZ$14 million annually. An additional NZ$14 million in funding would provide 2,100 "harm reduction" programme places, 3,140 programme places in group sessions with individual follow-up, and 500 intensive residential programme places. The intensive treatment programmes have the expectation of reduction of return to prison of high-risk offenders within one year of release, from 70% to 40%. The standard programme is expected to reduce the return within one year of medium-risk places, from 50% to 40%. This is supposed to equate to a reduction in the number of offenders in prison by 120 in the first year of this treatment and 145 each year thereafter[54].

[6.10] These figures are from the Department of Corrections and are four years old. I have found nothing to support these expectations, in evaluation terms, but am not surprised given the obvious difficulties involved with assessing success on an individual basis.

[6.11] Another Corrections booklet suggests that 83% of current inmates (current as at 2004) had alcohol or drug dependence problems at some time in their lives[55].

[6.12] It is not hard to see that effective treatment of substance dependence has the potential to bring about significant reductions in re-offending and re-imprisonment. Again, I point to the issue of the public and its involvement in this process. While alcohol remains a popular, legal drug and drunkenness is, if not encouraged, condoned and at times applauded as being socially acceptable and attractive, keeping people away from alcohol and other drugs will always be difficult.

7. FOLLOW-UP ON RELEASE FROM PRISON

[7.1] My experience suggests that something like 5% of those coming before the Court at Waitakere are breaching Court orders of one sort or another. That is certainly my impression over the time that I have been sitting there. The most commonly breached orders involve community work and supervision. There may follow an application by Corrections for cancellation of sentence and imposition of further community work or prison. Perhaps two or three only of the five hundred or more cases a week involve breaches of release conditions from prison. Informations are often laid months and sometimes years after release and the questions I often ask myself are: where was the follow-up, what was the follow-up, how effective was the follow-up, what resources were there put into the follow-up and how serious was the follow-up treated by Probation? I have often wondered why the prosecutions were always accompanied by fresh charges. The answer I have, on an informal basis from Probation, is that the only time prosecutions are brought where there has been a breach of release conditions (other than the parole situations for murder) is where there has been further offending and the breach of release conditions are simply tacked on. Countless numbers of those released from prison have, essentially, disappeared with no follow-up, despite release conditions set out in the *Sentencing Act* and/or imposed by sentencing Judges.

[7.2] Wexler and Winick[56] set out a scenario involving "Nando", reflecting a judicial system which is not therapeutic. Imprisonment provided Nando with an opportunity to reflect upon his life and to resolve in his mind to change his life but, neither the Court nor the prison system, gave him the tools to deal with his problem and he was "released into a community with a subway card and little more"[57].

[7.3] It is patently obvious that many of these people released will continue to offend. What Wexler and Winick say is "instead of seeing Nando as a case, we envisage a world in which the Judge and the judicial process will view him as a person with a problem, and will help him to identify his problem and offer him the help he may need to

resolve it"[58]. They go on to say "Our vision is not one of paternalistic Courts that coerce people to accept treatment or other services… we think that rehabilitation must start with the individual and build on his or her own strengths and desire to effect change. Criminal accusation or involvement in other Court processes can be catalysts to change. They provide opportunities to confront their problems and to consider whether to deal with them. We think that Judges can help in this process, but only if they look beyond the presenting symptoms that the case before them may reflect and try to understand and address the individual's underlying problems"[59]

[7.4] Our Waitakere FV Court commences the rehabilitation process with the individual. By working with the individual with respect and sincere appreciation of effort, and tangible appreciation of effort (reduction of sentence), we have made a start in the effort to reduce re-offending and revictimisation. I have little faith in the prison system's rehabilitation process with the result that what I often do is resist pressures to imprison so I can personally monitor the rehabilitation process in the community. By happy coincidence, this is the flavour of the month in Wellington where the penny has dropped that prisons cost money and while they give employment, they do not enhance the long-term health of society. However, there are significant numbers who, for one reason or another, must be imprisoned. Where a sentence is under two years we impose special release conditions, often extending six months beyond release or finish of sentence date, in terms of what we are entitled to do under the *Sentencing Act* and in the knowledge that most of these offenders will be released after serving a relatively small proportion of the sentence given (time served, reductions $^{1}/_{2}$ $^{2}/_{3}$ etc.). What is supposed to happen on their release is that they meet up with their Probation Officer on a regular basis and attend drug and alcohol, anger management, criminogenic or other courses that their special release conditions direct should happen. The evidence is, I am told by probation officers at Waitakere and by others involved in community groups such as the Living Without Violence group at Waitakere, Man Alive, that these directions are followed in a minority of cases owing to the lack of resources in Probation to monitor and provide what is required.

[7.5] Certainly at Waitakere the probation system seems to be under-resourced and preoccupied with pre-sentence reports and people sentenced to supervision in the community. Those released from prison with specific release conditions are, more often than not, neglected. Follow-up depends on the willingness of the offender to participate. Many will meet on a reasonably regular basis with their Probation officer but participation in courses, as directed, is rare. I have had discussions with probation officers and the manager of the Waitakere unit on this subject.

[7.6] The solutions are patently obvious. There must be close monitoring of what happens when people are released from prison to ensure that, as far is practicable, people are provided with opportunities to confront their problems and to consider how to deal with them with the help of a sensitive and sensible Probation Officer. There will be, to an extent, coercion and paternalism to ensure help is offered and encouragement

given with counselling and education to ensure people have the tools to overcome issues of anger, substance abuse, and management of personality disorders and Mental Health issues.

[7.7] The Judges at Waitakere met late 2006 with the local Mayor and a Councillor to consider, inter alia, how the Council might help with rehabilitation of prisoners released into the Waitakere area.

[7.8] You would not need a law change, in my view, for there to be judicial influence and oversight for people, following release from prison. The parole system could be used positively rather than, as it is in many instances now, negatively, to allow people to leave prison early with conditions not dissimilar to what happens now but with the additional personal close monitoring and oversight by a Parole Judge. I recently applied for a Parole Judge warrant, was not refused a warrant but was simply told there was no vacancy. There had been vacancies. The former Chief Judge, David Carruthers, is now the Chief Parole Judge and a man under the spotlight following recent intense media examination[60].

[7.9] In the United States of America, once again under the broad heading of "Therapeutic Jurisprudence", what they have described as the "Re-entry Court", is being developed to assist released prisoners to deal with successful reintegration into the community, and rehabilitation. An example given by Wexler and Winick is the Harlem Re-entry Court which deals with a number of parolees who have been in prison for many years, people who have spent years away from family, friends, and other supports[61]. It is difficult enough for most finding a home or getting a job on release from prison, let alone dealing with drug and alcohol addiction, anger, and other issues. There is no reference, from what I have read about the American Re-entry Courts, to follow through from sentencing Judge to Parole Judge. As far as I can see the parole Judge is not the sentencing Judge.

[7.10] What I would like to consider here, in the small country that is New Zealand, and the relatively small catchment area (200,000 people approximately) in West Auckland, is that the sentencing Judge is the Judge involved in both disposal to prison and re-entry to society. That is not to say the Judge takes an active part in the rehabilitation but simply that he or she takes an active interest and monitors in the same way we monitor and personally involve ourselves in the FV pre-sentence monitoring process now. Our active caseload would be limited to a relatively small number. In Harlem they began working with their first parolee in June 2001 and after two years were working with 20 parolees and expected the full caseload to number 96 clients (I have no idea where they found the figure "96"!). In Harlem each parolee completes three 3 month phases tailored to fit the needs of each parolee. An example given by Wexler and Winick[62] is one which would not be uncommon here, where a person was placed in prison and spent two and a half years there during which time there were issues with his partner with residential drug treatment and a child in foster care and a grandmother visiting the child on behalf of the person in prison. The Judge, on his release, worked

with the man with a view to the man persuading the Family Court that he was moving towards being a "responsible and dedicated father". The parolee attended parenting classes and drug treatment.

[7.11] I see no reason why, in Waitakere, a Re-entry Court would not be a possibility. We could start with those imprisoned for FV as a pilot, helping offenders released from prison with anger management and alcohol and/or drug issues. Another group to work with would be the "P" users, frequently the recidivist burglars whose activities affect so many different lives.

[7.12] The sentencing Judge would guide the rehabilitation process from the outset, mapping out proposed work, on an ongoing basis, during the prison sentences, working with the prison and then Probation to ensure consistency and a workable and working plan throughout.

[7.13] A difficulty for a Judge in this process is in maintaining judicial oversight, not unlike the governance role within a school or a corporation, as opposed to a managerial hands-on role. My instincts are those of a social worker. I may not be the ideal candidate to act as the Judge through the re-entry process, although I believe I could maintain my independent judicial role without a problem. Others may not agree. It is interesting to note that Wexler and Winick consider the independent judicial role does not work in the Re-entry Court and that the traditional parole system which sees independence as crucial to a parole Judge's job does not fit with the Re-entry Court. The Harlem approach saw the Judge sharing ideas with a team of, presumably, social workers, drug and alcohol counsellors, and other counsellors. They met once a week to review cases.

[7.14] As far as practicalities and the New Zealand law are concerned, I see nothing clearly impeding the ideas of the Harlem Re-entry Court. There will need to be a will to make it happen from the Chief Judge, to introduce it as a pilot and make it work. In Harlem, in 2004, the Re-entry Court did not have female parolees although the plan was to introduce them.

[7.15] As far as success is concerned, Wexler and Winick report that there were no re-arrests among the twenty -five parolees since the Re-entry Court's opening but, as they said, it was "early days"[63].

[7.16] The theoretical basis for the pilot courts in the United States is really that of the drug treatment courts and other problem solving courts involving:

- Assessment and strategic re-entry planning involving the prisoner, Judges, and others in the community who will be involved on release.

- Regular "status assessment meetings" involving the prisoner and those (including family) to be involved in the release.

- Co-ordination of the support services including substance abuse treatment entities, employment and other entities for involvement of community including victims' organisations and, presumably, community support groups for victims.

- Sanctions for hiccups on conditions of release, worked out prior to release.

- Rewards for success along the lines of our "carrots" which we have in our Family Violence Court and work on an ongoing basis during the prison sentences with the prisoners to ensure that there is already a plan, a path set out from the outset, linking smoothly into release.

These would be my criteria.

[7.17] Offenders are human and most humans are pleased when a Judge takes an interest in them and what they are doing. As a lawyer I was often concerned with Judges acting as robots in aspects of the Court process. It was rare, in my experience at the bar, for a Judge to "notice" who the person in front of them was. Even a, by all accounts, humane and caring individual such as Justice Chilwell, after a trial in which I was involved in many years ago, acting for a gay uncle of young persons who had alleged sexual interference, never looked at or spoke to my client as he left the dock sobbing after a jury acquitted him. Once my client had left the courtroom, I asked His Honour to consider recalling him to tell him that they jury had acquitted him and that "he left the Court without a stain on his character". Justice Chilwell appeared shocked at the suggestion but after a couple of seconds consideration he agreed to say something to him. Hemi Wiparata (my client) returned to the courtroom and was told that "not guilty meant just that and that the legal process had been gone through and there would be no record of the matter as far as he was concerned!". This was not exactly what I had in mind, but it was better than nothing.

[7.18] For the past fifteen years I have kept in touch with Mr Wiparata and, other than a few minor hiccups, he has kept out of trouble and heads the Otara Maori Wardens organisation for which body I remain "an advisor".

[7.19] I referred earlier to Richard Taka. My practice in Youth Court, developed over the last fifteen months, is to write to each young person I discharge under Section 282 of the *Children, Young Persons, and their Families Act* 1989, congratulating them from having 'graduated' from Youth Court without a record. Section 282 provides for a discharge which means that the information is deemed never to have been laid (Section 282(2)). It may be ordered for summary or indictable offences that may be tried summarily, but not purely indictable offences (Section 282(1)). I write to the people receiving 282 discharges with a personal note based on what I recall from the case and what I read in the file, and I keep records with a view to sending a Christmas card each year, the object being to show these young people that they have value as individuals,

as far as one particular Judge is concerned. The effects of this are intangible and impossible to gauge – but who knows, it might make a difference for some.

[7.20] The time is now for changes to our systems. Never before in my experience in New Zealand has there been more discussion on alternatives to prison, and on strategies to reduce re-offending. This New Zealand focus is mirrored worldwide. The Guardian Weekly, July 27, 2005[64], reported Patricia Scotland, the prisons Minister in England, launching six pilot schemes to make compulsory unpaid work by offenders more visible and to promote greater engagement with local communities. It was described as the "first serious attempt for some years to promote non-custodial sentences". It follows what was known as the Causfield enquiry, alternatives to prison involving communities with community penalties. The article records that "each year, offenders carry out more than five million hours of work, strictly enforced. This particular community penalty has been exported around the world and yet has received relatively little acclaim in the UK". Communities which had suffered from the crimes were asked to help identify the opportunities for offenders to make amends for their behaviour. The "community payback" was seen as a possible start of the transformation of the criminal justice landscape (and was expected to have a bumpy ride from the English equivalent of the Sensible Sentencing Trust we have in New Zealand!).

[7.21] John Reid, the British Home Secretary, has been asked by penal reform minister in Britain to shut down all women's prisons and cut the number of female prisoners from almost five thousand to one hundred[65]. The new Auckland women's prison opened in June and has increased the bed numbers for New Zealand women prison inmates by one third. The number of women locked up in New Zealand over the past decade has increased from one hundred and fifty one to four hundred and eleven[66]. Many of these women were in prisons many miles away from and inaccessible to their families. There are calls suggesting custody be reserved for a handful of violent, dangerous women. Twice as many women in Britain are being imprisoned for fraud and drug offences as a decade ago, and the reports say that the average sentence in Britain for women for burglary has doubled.

[7.22] The argument for keeping women in the community is the obvious one, which is that women tend to be primary caregivers for their children and many of those in prison have young children.

[7.23] I am on the mailing list of the Sensible Sentencing Trust, as I expect all Judges are. Their newsletter comes to my home. Newsletter No. 15, May 2006, carries a report from Garth McVicar, the national Chairman of the Sensible Sentencing Trust, of his recent visit overseas with the Minister of Corrections on a "fact finding trip overseas". Mr McVicar was criticised by some of his supporters for becoming part of the "political junket". He says that he accepted the invitation to go on the basis that "if we are going to reduce the number of victims in this country we need to reduce the level of offending. If other countries are doing better than us we need to know". He says the decision to go with the Minister was on that basis and he stood by that decision.

[7.24] He made positive statements on his return, but has since turned the positive around by saying that the example given on his return, of the Finnish prison system and their low prison numbers, was false. His view (to get his supporters back?) was that prison numbers were escalating and, in any event, Finland had a totally different culture mix to New Zealand, did not have the same level of violent crime, and was not an example New Zealand should follow!

[7.25] Some of the letters to the Sensible Sentencing team, printed in page seven of the magazine, are predictable: *"I really wonder if the whole justice system is now out of date and run by people who are so removed from society and its rapid changes that things are just going to get worse"*; *"I support the trust and believe there is a great need for a rational voice to be heard in this country to balance the never ending cry of the rights for lawbreakers, prisoners, inmates, and people who contribute nothing to this country"*.[67]

[7.26] The very obvious, to me and many others, deficiencies in a system which locks up rather than explores community rehabilitation is best depicted perhaps, in cartoon form, two examples being Chris Slane in the NZ Herald June 2004 and Malcolm Evans NZ Herald 1996. (**Appendices 2** and **3** respectively)

[7.27] In a more recent Guardian Weekly[68] there is a reference to senior Judges in England being urged to cut average sentences by 15% in the hope of preventing the prison population soaring to the predicted, more than 91,000, within five years. The Home Office had expressed shock at the rising numbers in jails, which reached a new record recently of 76,506 inmates. At the end of 2005 prison numbers had "stabilised" and the thought was that a "plateau" would be reached at 80,000. Not so. Figures from the Home Office confirmed that the English Courts had become increasingly punitive with the average sentence length fast increasing by 6% in just over eighteen months. This had been compounded by an increase in the numbers held on remand awaiting trial.

[7.28] Not surprisingly, the opposition spokesman on home affairs in England jumped on the bandwagon by saying "if numbers continue to grow at the rate we have seen this year the prison system will soon be in deep crisis. Jails are supposed to cut crime through education and training. Chronic overcrowding means prisoners are idling their time away in their cells instead".[69]

8. CAN WE MAKE THE CHANGES?

Preliminary Comments – the Judiciary

[8.1] Most of our Judges are reluctant or consider themselves unable to deal with high needs offenders, other than in the traditional way and in a way which could improve their lives and the lives of those with whom they will come in contact, once released from prisons.

[8.2] My thoughts on judicial training, which I have put to a number of High Court Judges when they have been appointed (including Chief Justice Dame Sian Elias), are that the best training they could have, given their (for the most part) sheltered lives, would be to don false beards and identities and spend a month or more on the streets in South Auckland. Given that none have accepted this proposition as realistic, other ideas need to be formulated as to how best to equip our Bench with people able and willing to work with difficult personnel.

[8.3] There are some positives in New Zealand. It is not all negative. Chief Justice Sian Elias, on 9 February 2005 gave a speech entitled "Criminology in the age of talkback". It was both 'positive' and 'negative' in my view. The speech was purportedly geared towards "the level of anger and anxiety generated by images and stories of individual crimes graphically communicated and properly shocking the community". The Chief Justice said she was concerned with wider values in the justice system than the ends of punishment in a particular case. The speech cautions Garth McVicar and his supporters that increased prison sentences will not necessarily work. Dame Sian records the fact that over the last twenty years the public has become disillusioned with the effectiveness of rehabilitation strategies but says that it is her feeling that the "mood has turned a little and there are signs that professional pessimism about the efficacy of corrections-based programmes for rehabilitation may be waning". Nevertheless, she appears to turn away from the informality of Restorative Justice, Youth Courts and what she sees as inconsistency in sentencing caused by processes adopted in pilot courts – perhaps the precursor to the Law Commission's Sentencing Council suggestion currently before the public[70].

9. BRIEFLY

Restorative Justice

[9.1] We have a pilot for Restorative Justice running in New Zealand. The success has been reasonable - there is an evaluation. The success and operation is more limited than it could and should be. For overseas guests examining the scheme there is an element of pretence in our protestations that it works well. When it does work it is because there is good facilitation and support in the community but judicial support is negligible. Case referrals are rare and generally linked to motor vehicle accident cases where there is injury or death. Rarely are burglaries or car conversions the subject of referrals.

Drug Court

[9.2] The Drug Court in Christchurch, another specialist Court referred to earlier, has started well. I look forward to supporting Stan Thorburn and other Judges working in the Auckland equivalent – not to be a 'Drug Court' but an 'Intensive Monitoring' court. This is a court I would like to sit in but I expect others are designated for it before me.

Personality Issues

[9.3] Again, an interesting field and an area where the Courts could become involved in ways not dissimilar to the Melbourne Bail Court methods. On 2 August 2006, while hearing Mental Health cases at the Inpatient Court at North Shore, I came across a clear case of a person disabled through a personality disorder. He was in ICU at North Shore and had destroyed two rooms at the Mental Health unit before a doctor was brave enough to say that enough was enough, and obtained a second opinion from the Mason Clinic which said there was no mental disorder, as per the *Mental Health Act* definition. I discharged him off the Act and he went home. He has spent years hiding behind the *Mental Health Act* demolishing hospital and other property but, thankfully, not hurting people (as yet). I have concerns with risk to his partner, who drove him home. He will have follow-up with Mental Health authorities but they may lose interest now he is off the Act and he could well be 'on his own'. He should now be charged in respect of the damage he has caused. Once charged, he will come before the Court and, in theory, a Court could monitor what happens with him in the same way as happens with homeless people in Victoria. But that is not what will happen.

10. CONCLUSION

[10.1] It is wrong to shape penal policy on the views of the public and pressure generated following media reports of horrific offending consistently carried out by people with the variety of problems we have discussed. Penal policy should lead public opinion.

[10.2] The media publish, from time to time, excellent information about the *Sentencing Act* and the factors. Judges must, and do, take into consideration when dealing with high needs offenders. However, it is the front page news of our daily newspapers, more and more resembling tabloids in the worst sense of the word, which mislead and persuade the public on issues such as parole, recidivism rates of people serving community-based sentences, paying little or no regard to the difficulties all Judges have in predicting future behaviour with clients whose high needs are seldom recognised or dealt with.

[10.3] What does the future hold? With neither the public's nor parliament's support, the activities of activist and interventionist Judges will likely go the way of Ted Thomas' drowning man and Judge. The current glimmer of long-term hope is the realisation both public and parliament are coming to that full prisons do not reduce offending, serious or otherwise. By seizing this mood, the activist and interventionist Judge may be able to continue to sit and work alongside the conservative six, and pray that the world will recognise the sense of change.

---

* Judge Phillip Recordon, District Court Judge, New Zealand. At Kos 2007, Judge Recordon spoke to the topic *Disabilities and the Criminal Justice System*, based on this paper prepared by him in April 2007.

Appendix 1

Multi-Systemic Therapy - MST Risk and Protective Factors

CONTEXT	RISK FACTORS	PROTECTIVE FACTORS
Individual	- low verbal skills - favourable attitudes toward antisocial behaviour - psychiatric symptomatology - cognitive bias to attribute hostile intentions to others	- intelligence - being firstborn - easy temperament - conventional attitudes - problem solving skills
Family	- lack of monitoring - ineffective discipline - low warmth - high conflict - parental difficulties e.g. drug abuse, psychiatric conditions - criminality	- attachment to parents - supportive family environment - marital harmony
Peer	- association with deviant peers - poor relationship skills - low association with prosocial peers	- bonding with prosocial peers
School	- low achievement - dropout - low commitment to education - aspects of the schools, such as a weak structure and chaotic environment	- commitment to schooling
Neighbourhood & Community	- high mobility - low community support (neighbours), neighbours, church etc. - high disorganisation - criminal subculture	- ongoing involvement in church activities - strong indigenous support network

Implications of Risk Factors and Protective Factors for Treatment

Clinical implications of these findings seem relatively straightforward. If the primary goal of treatment is to minimise the probability of decreasing rates of antisocial behaviour, then treatment approaches must have flexibility to attenuate the multiple known determinants of antisocial behaviour (i.e. risk factors), while enhancing protective factors. That is, effective treatment must have the capacity to intervene comprehensively, at individual, family, peer, school, and possibly even neighbourhood levels.

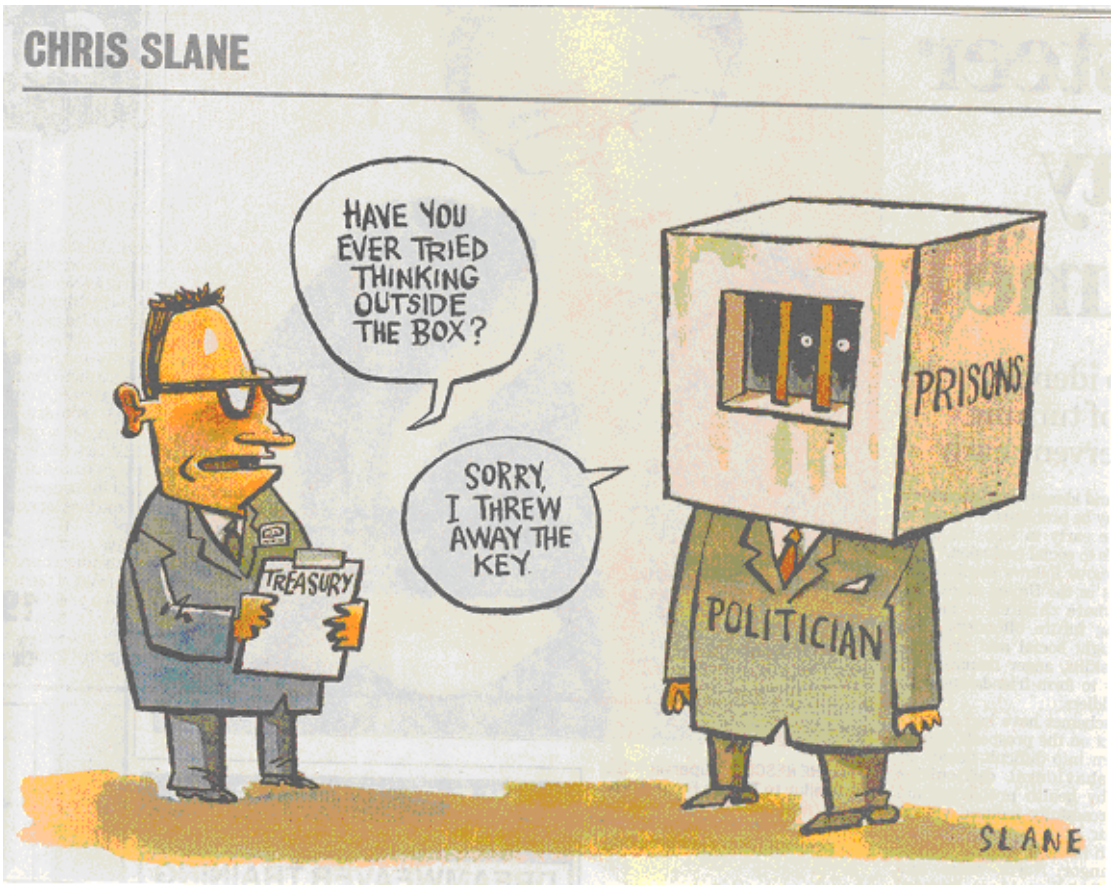
Study Features	Columbia, MO[a]	Simpsonville, SC[b]	Multisite, SC[c]	Charleston, SC[d]
Participant Characteristics:				
Mean Age (years)	14.8	15.2	15.2	15.7
Age Range (years)	12-17	12-17	10.4-17.6	12-17
No. Male	67.5	77	82	79
No. Caucasian	70	42	19	47
No. African-American	30	56	81	50
No. Single Parent Families	47	-[f]	50	50
Mean Number of Previous Arrests	4.2	3.5	3.1	2.9
No. With at Least One Violent Arrest	19	54	40	-
No. With Previous Incarceration for at Least 3 Weeks	63	71	59	-
Eligibility Criteria:				
Violent or Chronic Offender	No[e]	Yes	Yes	No
Prominent Risk of Out-of-Home Placement	No	Yes	Yes	No
Diagnosed Substance Abuse	No	No	No	Yes

or Dependence				
At Least One Parent Figure in Home	Yes	Yes	Yes	Yes

With regard to MST in particular, interventions are designed to address those risk factors and protective factors that are closest to identified treatment goals. Thus, in any one case, MST will address an individualised subset of risk and protective factors. Because of the broad variety of potentially important risk and protective factors, however, MST must have the capacity to address a broad and comprehensive range of different variables. Consequently, the identification of the key variables in a particular case is the major task of assessment in MST.

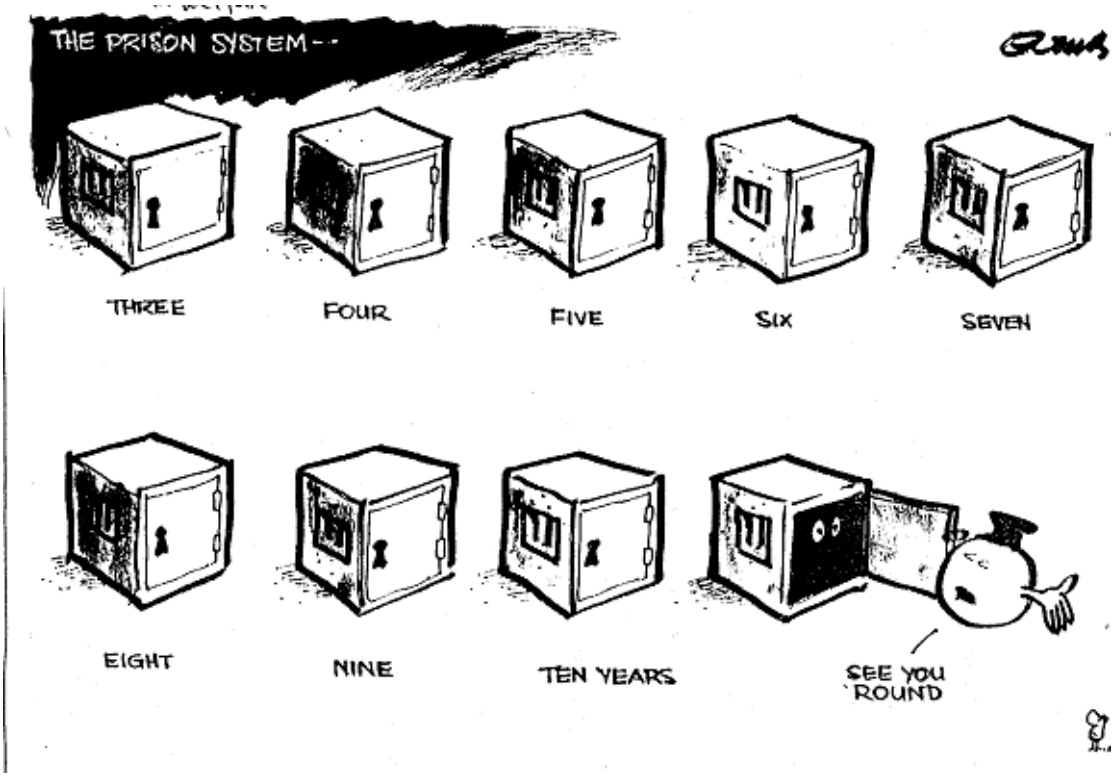
Appendix 2

Cartoon – The Prison System, by Chris Slane



Appendix 3

Cartoon – by Malcolm Evans' (from 1996)



REFERENCES AND FOOTNOTES

Bruce Winick and David Wexler, *Judging in a Therapeutic Key*, (Carolina Academic Press, North Carolina, 2003)

Court of Appeal Report for 2005, *Conference of Judges*, (2005)

Department of Corrections, *About Time*, (2001)

Department of Corrections, *Community Based Intervention*, (2006)

Department of Corrections, *Strategy to Reduce Drug and Alcohol Use by Offenders (2005-2008)*, (2004)

E W Thomas, *The Judicial Process,* (Cambridge University Press, Cambridge, 2005)

Guardian Weekly, Britain (various references)

Law Commission Report 85, *Delivering Justice for All* (2004)

Law Commission, Seating Solution, *Review of New Zealand Court System* (2002)

Ministry of Health, *Draft National Drug and Alcohol Policy* (1995)

Ministry of Health, *Youth Mental Health and Suicide Prevention*, (1994)

Ministry of Justice, *Task Force for Action on Violence Within Families*, (July 2006)

Ministry of Youth Affairs, *Tough is not Enough*, (2000)

New Zealand Herald (various references)

New Zealand Law Society, *Law Talk*, Issue 662, (March 2006)

New Zealand Standard 8006:2006, *Screening, Risk Assessment and Intervention for Family Violence*, (2006)

[1] Sir Geoffrey Palmer, reported in Law News, Auckland District Law Society, Issue no 18, 19 May 2006.
[2] Law Talk, New Zealand Law Society, Issue 662, 13 March 2006.
[3] Criminal Procedure (Mentally Impaired Persons) Act 2003; Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.
[4] *Mark Lyon v Police* [9 May 2006] High Court, Auckland, CRI-2004-404-0077A, Frater J.
[5] Not biological brothers – both sentenced by the High Court at Auckland in 2006. The "second" brother, Frankie, narrowly "escaped" preventive detention – was given a final warning by Justice Lang: *R v Frankie Edwards* [19 December 2006] High Court, Auckland, CRI-2006-090-004361, Lang J.
[6] *Managing Offenders,* Department of Corrections, Wellington, December 2002.
[7] See footnote 5, supra.
[8] *Report of the Committee of Enquiry into the Procedures Used in Certain Psychiatric Hospitals in Relation to Admission, Discharge or Release on Leave of Certain Classes of Patients,* Auckland, August 1988.
[9] See footnote 3, supra.
[10] Set up as a pilot in 2004 with the goal of dealing with Family Violence as a family issue and not simply as criminal offending.
[11] For example: *Drugs in New Zealand/Drug use in New Zealand Comparison Surveys 1990–1998,* Adrienne Field and Sally Casswell. *A Local Pilot of the New Zealand Arrestee, Drug Abuse Monitoring* (NZ-ADAM) System Wilkins, Pledger, Lee, Adams, Rose – Massey University Centre for Social and Health Outcomes Research and Evaluation, July 2000.
[12] The Alcoholism and Drug Addiction Act, 1966.
[13] Sensible Sentencing Trust Newsletter no 15, May 2006 – report from Garth McVicar following his voyage on a fact finding trip with the Minister of Corrections.
[14] 28 February 2007.
[15] Darling Park, Sydney, May 2006, Page 69.
[16] E W Thomas, *The Judicial Process,* Cambridge University Press, Cambridge, 2005.
[17] See footnote 16, supra, Page 95.
[18] Children, Young Persons and their Families Act, 1989.
[19] Opening address by Chief Youth Court Judge, Andrew Becroft to NZ Youth Court Judges Conference, Napier, 9 March 2007.
[20] See footnote 19, supra.
[21] Charitable Trust working in the area of substance abuse.
[22] Children, Young Persons and their Families Act, 1989.
[23] Court in the Act, Ministry of Justice, Wellington, July 2006.
[24] E-mail, August 2006, from Judge Callander to all New Zealand District Court Judges, enclosing paper *Teenage Peer Influences, A Sentencing Evaluation,* Judge J R Callander, September 1987.
[25] David Wexler, Seminar for New Zealand Judges on Therapeutic Jurisprudence, October 2005.
[26] See footnote 24, supra.
[27] Heggler and others (1986) Brunk, Heggeler and Whelan (1987), referred to in and reproduced in part in a paper 25 June 2001 and produced by Richmond Fellowship New Zealand.
[28] Youth Horizons is a non-governmental organisation delivering youth services including mental health services, in Auckland. The team was launched late 2006.
[29] Becroft, Court in the Act, Ministry of Justice, Wellington, January 2006.
[30] Kaitaia, Kaikohe. Becroft, Court in the Act, Ministry of Justice, January 2006.
[31] See footnote 19, supra.
[32] Similar to our recently introduced, for adults, E-Bail.
[33] *Reflections of Youth Court Judge Andrew Becroft* after observation of the England Youth Justice systems, 12-21 September 2003, e-mailed to NZ Youth Court Judges December 2005.
[34] Linda Zampese, *When the Bough Breaks,* a literature based intervention strategy for young offenders, Department of Corrections, Christchurch, 1977.
[35] *2005 Guide to Court Support Services*, The Magistrates Court of Victoria, Melbourne, Victoria, Australia, 2005.
[36] Magistrates Court, http://www.magistratescourt.vic.govt.au , 10 February 2006.
[37] Chief Magistrate Jelena Popovic, address to Second Australian Conference on Drug Strategy, Melbourne, Victoria, Australia, May 2002.

[38] New Zealand Standard: Screening, risk assessment and intervention for family violence including child abuse and neglect, NZS 8006/2006.
[39] Otago Daily Times, 10 June 2006, Page 2.
[40] Sentencing Act 2002. Discharge without conviction based on criteria as set out by s107 – consequences of a conviction outweighing the need for a conviction having regard to all circumstances.
[41] Elizabeth Bartlett, *Is Domestic Violence Increasing or Decreasing?,* Elizabeth Bartlett Research and Evaluation, Ministry of Justice, June 2005.
[42] New Zealand Health Information Service, http://www.nzhis.govt.nz/publications/drugs.html , 18 February 2005.
[43] See footnote 42, supra.
[44] See footnote 42, supra.
[45] NZPA Newswire, 26 May 2006.
[46] Maori drug and alcohol advisory group, funded by Ministry of Corrections.
[47] See footnote 42, supra.
[48] Chris Wilkins, *Designer Amphetamines in New Zealand – Policy Challenges and Initiatives*, Massey University, 10 February 2005.
[49] Linked with National Drug Policy, http://www.ndp.govt.nz/drugs/otherresources.html , 9 February 2005.
[50] Ministry Action Group on Drugs, Wellington, 22 May 2003.
[51] Seminar over 2 days on "P" addicts and possible effects on the unborn children of pregnant "P" users.
[52] Department of Corrections letter, Public Prisons Service, Warren Cummins, Regional Manager, Northern Region Public Prisons, 15 May 2006.
[53] See footnote 48, supra.
[54] *Strategy to reduce Drug and Alcohol use of Offenders for the years 2005 to 2008*, Department of Corrections, Wellington, 2004.
[55] Corrections Department NZ, http://www.corrections.govt.nz/public/research/effectiveness-treatment, 2 June 2005.
[56] Bruce Winick and David Wexler, *Judging in a Therapeutic Key*, Carolina Academic Press, North Carolina, 2003.
[57] ibid page 13.
[58] ibid page 18.
[59] ibid page 18.
[60] "The Burton case" – release of convicted murderer who killed again on release on parole, 2007.
[61] Winick and Wexler, supra, Page 67.
[62] Winick and Wexler, supra, Page 257.
[63] Winick and Wexler, supra, Page 19.
[64] The Guardian Weekly magazine, London, England, 27 July 2005.
[65] *The Impact of Corrections on Re-offending*, Harper and Chitty, Home Office, February 2005.
[66] *Jails Policy a Disgrace*, The New Zealand Herald, 15 May 2006.
[67] Sensible Sentencing Trust, Newsletter No. 15, May 2006.
[68] 27 July 2005.
[69] Footnote 67, supra.
[70] Chief Justice, *Public impression of the role of our judges and courts is a cause for concern*, reported (in part) in Law News, Issue No. 07, 2 March 2001, Page 8.