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In this, the final edition of Court in the Act for 2011, we would like to wish you all a safe and relaxing Christmas, with plenty of time spent with family and friends and plenty of sun (here's hoping)!

## 2011- Some Christmas Reflections Through Youth Justice Lenses

Judge Becroft



As we end 2011 with all its rush, and as we unwind with our families and perhaps think on some of the real reasons for the Christmas season, it is a good opportunity to look back on the year past.

From any perspective, the Christchurch earthquake has dominated the year for many of us. Amidst all the stories there have also been unsung heroes within the youth justice system. Those social workers and youth advocates who visited their clients at home and offered help and support; those community groups who ferreted out young offenders before the court and drove them in vans by relay to makeshift court hearings around Christchurch; those who cobbled together paper files when the court files were inaccessible; and so the stories go on. Yet, out of the tragedy and despair of Christchurch, there is, from the youth justice perspective, the chance to deliver a new model. Many are already dreaming of a community based justice centre, located in suburban Christchurch, where all those involved in youth justice can be co-located, with a purpose built Youth Court room, suitable also for other community type hearings including the Family Court, Tenancy Tribunal and Disputes Tribunal etc. The efforts of our youth justice colleagues in Christchurch have been inspirational and we hope for them, in particular, that this Christmas can be calm, still and peaceful.

That said, there is much to celebrate in youth justice this year. Youth Court numbers are down (by 27% in the last 2 years) and the percentage of young offenders dealt with by police diversionary programmes and warnings are beginning to increase again.

*Continued*



...The new Chief Social Worker and his team have commenced work on rejuvenating and lifting the standard of Family Group Conferences and a cross-departmental working party has been convened to support and encourage better involvement by victims of youth offenders.

The Fresh Start legislation, and the new initiatives it has launched, has had a significant improvement on youth justice practice and has been largely well received. Thus far, very few 12 or 13 year olds have been charged and most of those initially appearing in the Youth Court have, by consent, been “pushed back” into the Family Court system as their overwhelming needs are to deal with their lack of care, proper protection and family neglect. Mentoring and drug and alcohol programmes have been embraced either in Family Group Conference plans or in Youth Court orders. There is much more work to be done to properly utilise the opportunities provided by the new parenting orders. The numbers of those convicted and transferred to the District Court have declined, as was the aim of the architects of the Fresh Start legislation, with a greater range of options in the Youth Court being utilised. The jury is still out on MAC Camps. While they have lifted the quality of programs and support provided to young people while in a youth justice residence, the real challenge will always remain the reintegration of these young offenders back into their communities with lasting and genuine rehabilitation cemented.

Two weeks ago the tenth Rangatahi Court, Te Kooti Rangatahi o Te Arawa, was launched in Rotorua. Added to that are the two Pasifika courts led by Judge Ida Malosi in Mangere and Avondale. Research as to the quality of the processes that are being used and how these processes can better meet the aims and needs of the Rangatahi Court is expected to

commence in 2012. 2011 has seen the rise and rise of lay advocates— Youth Court appointed advocates that provide relevant cultural advocacy to the courts and who provide advocacy for the families of young offenders. There is now an appointment process for lay advocates and a comprehensive training package provided by the ever energetic Ministry of Justice Youth and Criminal team. The government has recently announced a 33 million dollar package over 4 years to develop a comprehensive nationwide youth forensic service with appropriate residential facilities for those young offenders who are seriously mentally unwell or intellectually disabled.

We can approach 2012 with our energy redoubled. Much is happening within the youth justice sector which is exciting, innovating and challenging. Can I take the opportunity to thank all those involved in the youth justice sector for their commitment, dedication and unflagging energy. In some ways the particular challenges presented by our most serious young offenders have never been greater yet our responses have never been more committed.

I wish all of you involved in the youth justice system a refreshing, relaxing and meaningful Christmas and New Year break and I look forward to catching up with you in 2012.

Andrew Becroft  
Principal Youth Court Judge

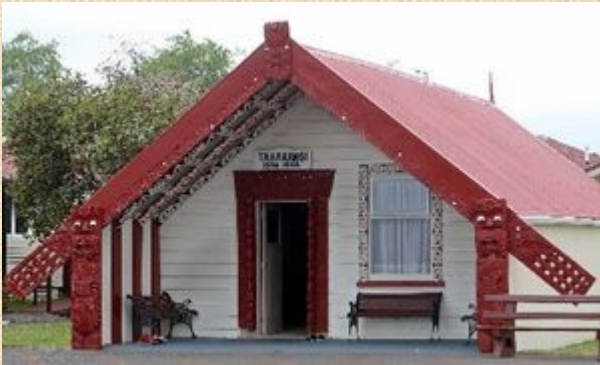


# Rangatahi Court Launch

On the 3 December 2011, I (editor Emily Bruce) had the pleasure of attending the launch of Rotorua's Rangatahi Court.

## Background: the Court

Te Arawa Rangatahi Court will begin sitting in February at Taharangi Marae. It joins the ranks of Rangatahi courts as the tenth in line, and will be presided over by Judge Louis Bidois, who is a Tauranga-based Judge of Te Arawa descent, and who worked as a criminal lawyer in Rotorua before being appointed to the bench in 2002.



Taharangi Marae, the location of Te Kooti Rangatahi o Te Arawa

Young people who admit a charge in the Rotorua Youth Court will have the opportunity to have their Family Group Conference plan monitored on the Rangatahi Court on Taharangi Marae (with some exceptions – for example, if the victim disagrees with this). This option will be available to both Maori and non-Maori offenders. A Maori Youth Court Judge will preside over each hearing, alongside kaumatua and kuia from the community. Te Arawa protocol will be followed at all times throughout the hearing. The young person and his/her family may also be assisted by a lay advocate, who is a (non-legally trained) representative appointed by the Court to ensure that the Court is made aware of all cultural matters relevant to the proceedings and representing the interests of the young person's whanau to the extent that those interests are not otherwise represented.

## The Ceremony

The launch of Rotorua's Rangatahi Court was held on Te Ao Marama marae, and presided over by Reverend Tom Poata. A striking element of the ceremony was the obvious commitment to, and belief in, the initiative from youth justice professionals from the local community. Several of the ceremony's speakers were professionals with a link to, or who work in, Rotorua.

Child Youth and Family Youth Justice Social Worker Chantelle Walker, who works in Rotorua, spoke of the impact that a marae based court would have for young people in fulfilling the potential that she sees on a daily basis. Judge Louis Bidois reflected on the way in which the Rangatahi Court is able to engage whanau, and the impact of this. He gave the powerful example of a young person who had committed multiple offences, and been placed in several different placements. It was having his case heard on a marae, however, which brought his koro (grandfather), a key player in his life, along to the proceedings.

Several speakers, such as New Zealand Police Superintendent Wally Haumaha and Judge Becroft noted the urgent need to create better criminal justice outcomes for Maori. Many reflected on the unacceptable nature of the statistics for Maori in the criminal justice system, and in particular the disparity between the number of young Maori in the population as compared to the number before the courts and in residences.

"It is disheartening to see that so many of our rangatahi don't know who they are or where they come from, its sad to know that they feel more connected to their bros and the colour of their caps than they do to the world around them. They are yearning to feel connected to someone, something, somewhere, this is evidenced by the relationships they have with one another and the offending they commit together. Our rangatahi could achieve this sense of belonging and connectedness through their culture by knowing who they are and where they come from, and by having more of an understanding of tikanga and realizing the potential within te ao maori and this is where I believe Te Kooti Rangatahi will be of benefit to our rohe, it is an attempt to use the traditional values of tikanga Maori."

- Chantelle Walker, Child Youth and Family Youth Justice Social Worker, Opening Ceremony Speech

The background to, and procedure of, the Rangatahi Courts were ably explained by Wendy Robertson and Warren Morgan of the Rotorua District Court. Tribute was paid by them to the Maori judges who have been instrumental in providing the rangatahi court service since 2008. Speakers also paid tribute to the many people who have played a role in opening the Court in Rotorua, including special mention of Judge .....

*Continued*



...Taumaunu, who acts as the liaison Judge for Rangatahi Courts, and Judge Bidois for his active involvement.

It was altogether a truly moving ceremony that reflected the clear will of the community to undertake to provide this service, and we wish them all the very best for the work ahead in the year 2012.

**“Whaia ko te matauranga hei whitiki te iwi kia toa ai”**

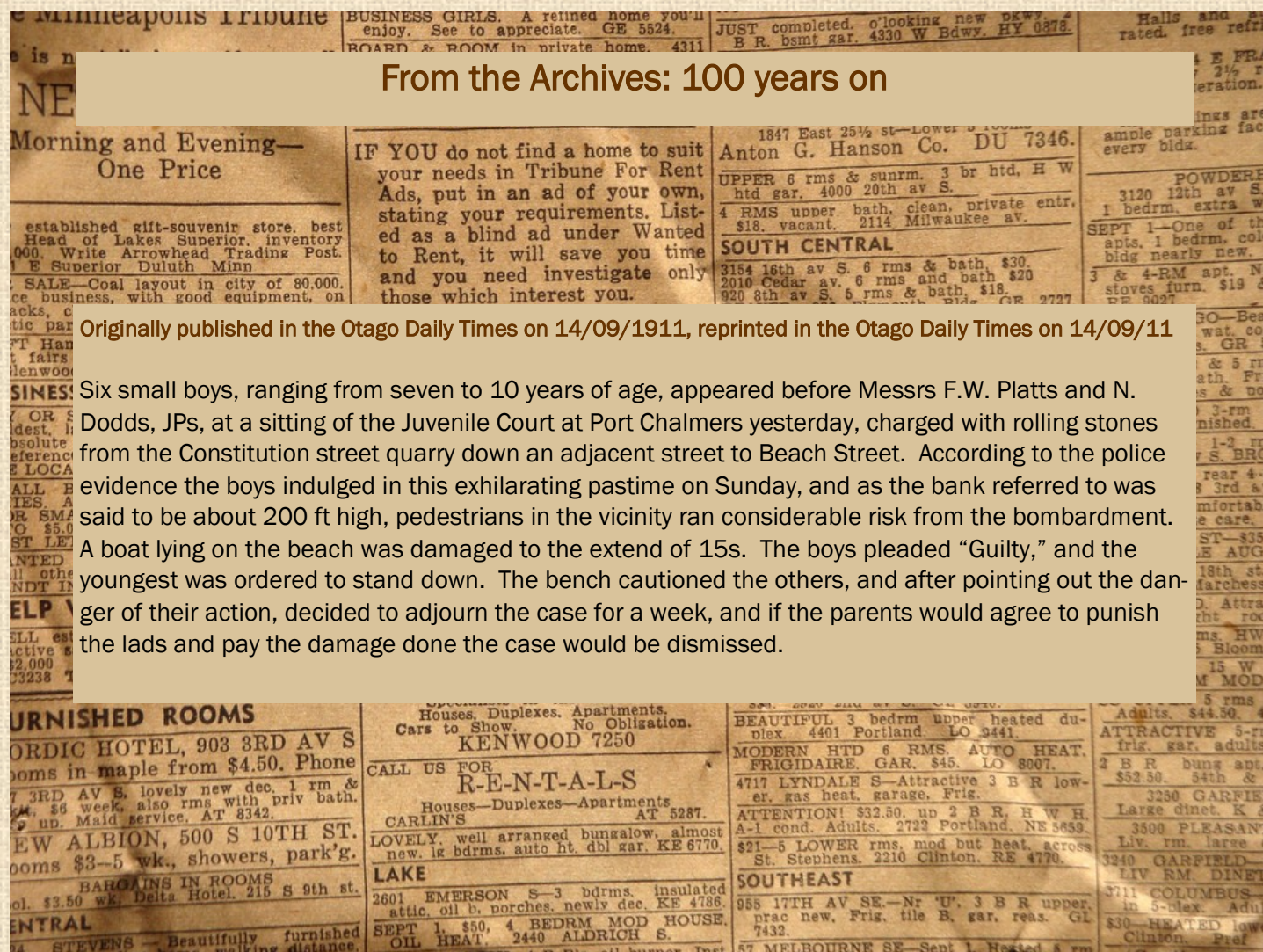
**“Seek ye from the fountain of knowledge so the people may be uplifted, thrive and prosper”**

**Ta Kepa Ehau**

### From the Archives: 100 years on

Originally published in the Otago Daily Times on 14/09/1911, reprinted in the Otago Daily Times on 14/09/11

Six small boys, ranging from seven to 10 years of age, appeared before Messrs F.W. Platts and N. Dodds, JPs, at a sitting of the Juvenile Court at Port Chalmers yesterday, charged with rolling stones from the Constitution street quarry down an adjacent street to Beach Street. According to the police evidence the boys indulged in this exhilarating pastime on Sunday, and as the bank referred to was said to be about 200 ft high, pedestrians in the vicinity ran considerable risk from the bombardment. A boat lying on the beach was damaged to the extent of 15s. The boys pleaded “Guilty,” and the youngest was ordered to stand down. The bench cautioned the others, and after pointing out the danger of their action, decided to adjourn the case for a week, and if the parents would agree to punish the lads and pay the damage done the case would be dismissed.



# Restorative Justice

An exciting event in November was the Restorative Justice Aotearoa Conference held in Wellington. Judge Becroft delivered a presentation entitled "Where to for Restorative Justice? (Some "after dinner" reflections through the lens of the Youth Court). Here is a summary of the presentation:

## Introduction

In the last 21 years, about 140,000 youth justice FGCs have been held (and that's a conservative estimate)! A stunning figure in anyone's language. At the same time, these FGCs have operated largely under the radar. Two generations of New Zealand have now been through them. Dr Nessa Lynch of Victoria University argues in her soon to be published paper that FGCs have remained relatively impervious to punitive swings of the pendulum, whereas in her view the adult system has "swung" and has closely reflected a more populist approach.

The Children, Young Persons and their Families Act was enacted in 1989, in the same year as, but apparently without knowledge of, the United Nations Convention on the Rights of the Child. Interestingly, restorative justice is not once mentioned in the Act. It is almost as if restorative justice was introduced by accident! FGCs were introduced as meetings with a purpose: to determine if a charge against a young person was admitted and to recommend an appropriate response. Their potentially restorative nature was never spelled out in the legislation. Having said that, they were quickly practised in way that reflects a restorative ethos. The lack of prescription in the Act may explain why FGCs have been so flexible (a great strength) but also why there is so little in writing about best practice. At any rate by the early to mid 1990s the rest of the world had sat up and taken notice: here in New Zealand, on the edge of the world, the youth justice system was demonstrating the effectiveness of a restorative justice approach.

## Some Reflections on FGCs

### 1. *Strong in practice; short on theory?*

While strong in practice, we are definitely lacking in theory and research on our FGCs. The leading theorists are Judge Fred McElrea, and Drs Gabrielle Maxwell and Alison Morris. There has been little very recent research of late, and there is little ongoing theoretical discussion. We do not have an up to date manual or a comprehensive best practice handbook for youth justice FGCs. Why is this?



### 2. *FGCs misunderstood by the public*

There is a perception that mistakes the FGC as the replacement for a sentence, and claims are made such as "all the young person got was an FGC!" The FGC is primarily, in the youth justice context, a "decision-making mechanism" exercising delegated powers that would otherwise be exercised by the Youth Court. It is not a sentence in and of itself, but a body which formulates a "provisional" response to a young person's offending, and in effect crafts what might otherwise be called "a sentence".

### 3. *Who is an FGC for? The victim and/or the young offender?*

A difficult question, and one that each of over 100 Youth Justice FGC coordinators might answer differently. The Children, Young Persons and their Families Act is clearly "weighted" in favour of the young offender. Too often victims report they are being conscripted into a process which seems directed towards offender rehabilitation rather than victim-offender restoration. Sadly, where there are identifiable victims of a youth crime, only 34.5% attended the FGC, and of them 52.5% provided submissions. A not altogether stunning rate. Yet Gabrielle Maxwell's 2003 research reports relatively high rates of victim satisfaction nonetheless.

### 4. *Too much focus on the "deed", not enough on the "need"?*

We are excellent at focussing on the deed in our FGCs: our strong accountability practices result, for example, in a remarkably high amount of reparation being repaid. However, in doing this, have we .... *Continued*



....ignored or made subservient our focus on the “need”, which is so vital to restoration? A cannabis dependent burglar needs his addiction issues addressed to be able to truly be rehabilitated. Historically, there has been a practice of restricting attendance of professionals from FGCs: social workers, for example, are not entitled participants. The emphasis, rightly, is on the family, but does a family **always** know best as to the needs of their young person? We need good assessments to empower and inform family decision making. The 2010 amendments to the Children, Young Persons and their Families Act added a requirement (s 208(fa)) to address the underlying causes of offending. Arguably, such an amendment was only considered necessary because of poor FGC practice.

### **5. Exciting Future Opportunities**

I am very excited to see the growing use of restorative justice practices in schools, and acknowledge the work of Margaret Thorsborn in that regard. Surely this is better, if possible, than the sometimes rather “crude” stand - down, exclusion route? Could we extend this into the workplace? Judge McElrea has suggested that we create community justice centres for restorative practices, an idea definitely worth pursuing.

### **Conclusion**

There are seeds of genius in New Zealand’s youth justice system. If we were to “scrap” FGCs, what would we replace them with? Do we seriously want to return to the bad old days when Judges made all the decisions, when young people stood near mute in the dock, and victims were marginalised by-standers with limited rights to contribute and no opportunity to find understanding, restoration, and even peace? This song, written by a young offender after an FGC, powerfully testifies to the power of the process!

#### ***Hemi’s Song***

(nb: Hemi is not the real name)

I’m sorry for all the pain that I caused  
Putting your family through something I could never have stopped  
And now I’m staring at the stars thinking of what i have done  
Something stupid of course what was I thinking of  
Looking for my mentality but that was lost  
Back in the days BC id be pinned to a cross  
But instead I’m writing this rhyme because you gave me a chance  
So in the words that I write  
You should know that they came from my heart  
You opened my eyes despising what I had done  
Look above and find the strength to carry on....

The stupid things I’ve done in my life  
Creating enemies that want to bring a lot of strife  
We’d fight  
On the streets  
Is probably where you would see me  
Drugged out struggling to breath  
But now im down on my knees  
With a million apologies  
Please time freeze wish I could turn back the time  
Rewind but its all over and done  
A new era begun  
The sun has risen  
And its shining through  
This song I compose is dedicated to you.

# From the Archives

## 42 Years On

### Another "birch boy" order

Originally published in the Guardian on 22 November 1969 (reprinted on <http://www.guardian.co.uk> on 22 November 2011)

As the Isle of Man argued yesterday over a petition calling for reform of its corporal punishment laws, a Manx juvenile court sentenced a 16-year-old boy to four strokes of the birch.

It happened in the courtroom inside the medieval stone walls of Castle Rushen at Castletown. The boy admitted two charges of common assault on a 15-year-old boy and a 15-year-old girl, by firing a 22 pistol at them in the street as he drove past in a friend's car. Three magistrates, one a woman, ordered the birching after a 70-minute retirement to consider sentence. The boy appeared on remand and reports on him were produced by probation officer Mr Robert Kennison.

After the court hearing, the boy's mother, who has five other children, was crying as she said: "I was waiting for this and dreading it as we sat in court. I can't bear to think about what is happening to him. To me it is sheer sadism. It will not help my son at all. He's been in trouble with the police before. But he's just impulsive and this will only make him bitter. One of the worst things was that it had taken weeks to deal with the case," she said. "The waiting had been terrible. But the worst thing of all is that I can't have my son back to look after him after this beating," she said. This is because he was also sentenced to three weeks' detention in the island's remand home.

There was a total of 15 charges against him. Six related to drinking and buying drinks for others while under age and one was for behaviour tending to a breach of the peace. The rest related to possessing the pistol without a licence, firing it in a public street, and being in possession of it in a public street. Fines totalling £22 were also imposed.

The chairman of the magistrates, Mr George Costain, a Castleton butcher, said outside the court: "In nearly 10 years on the Bench this is not the first birching I have ordered. But I have nothing to say about this case or the birching issue. It would not be proper."

An anonymous donor has offered £100 to the 15-year-old boy who was birched three times in the Isle of Man, two days after trying to commit suicide. He said yesterday: "It will help to heal his dignity and show that at least someone in the Isle of Man cares." Mr X, as he wants to be known, said that if the boy will get in touch with him through a go-between, he will hand over the cheque. He named the go-between as Mr Gordon McNeill, aged 64, a retired seafarer, of Upper Dukes Road, Douglas, who has already offered a further £100 if anyone will set up an anti-birching society on the island.

*[The last birching on the Isle of Man took place in 1976 but the law was not formally repealed until 1993.]*

# Overseas News

## **United Kingdom: Youth Justice Board saved before expected Lords defeat**

From the Guardian, Alan Travis, ([www.guardian.co.uk/](http://www.guardian.co.uk/)) , 23 November 2011

Justice secretary Ken Clarke makes U-turn on controversial abolition of youth offenders organisation before Lords vote to retain Youth Justice Board The justice secretary, Ken Clarke, has reprieved the Youth Justice Board of England and Wales (YJB) from abolition in advance of an expected House of Lords defeat over the move.

The YJB U-turn by Clarke follows hard on the heels of his decision to drop moves to axe the new post of chief coroner. Both moves had originally formed part of the coalition government's plans to cull the number of Whitehall quangos.



The Lords voted earlier this year to save the YJB – a move which ministers later reversed in the Commons. But it appears Clarke has decided that was no longer possible as a fresh battle threatened to derail the progress of the Public Bodies Bill.

A Ministry of Justice spokesperson confirmed the YJB decision in advance of the Lords vote on the legislation: "Following careful consideration we have decided not to pursue the abolition of the YJB as part of the Public Bodies Bill.

"However, we still believe that youth justice system should be reformed to make it more efficient and directly accountable to ministers.

Further details will be announced in due course."

The YJB was set up in 1998 by Jack Straw when he was home secretary to oversee what was then regarded as a "fractured and immature youth justice system". The bulk of its annual £404m is spent on providing custodial places for juvenile offenders.

The board's 300 staff also play a key role in the network of youth offending teams across England and Wales.

The original Clarke proposal was to move the YJB "in-house" as an internal division of the Ministry of Justice which raised fears that it would rapidly become absorbed into the culture of the national offender management service which is dominated by adult prisons. The YJB has long had a distinct objective of pursuing an approach more based on welfare and children's rights although it has been hit by two restraint-related deaths of young teenagers in custody.

Justice ministry sources indicated that ministers may yet introduce a closer relationship between the justice ministry and the reprieved YJB. They stress that the original abolition decision was based on a need to increase accountability rather than saving money or undermining the network of youth offending teams.


The former chief inspector of prisons, Lord Ramsbotham, and a crossbench peer whose amendment reprieving the board was accepted by the government, welcomed the decision, saying the body had proved its worth during the summer riots.

"During that period the Youth Justice Board played an enormously important part in liaising with, overseeing and helping both the youth offender teams out in the community and also the oversight of those being received in custody who required a great deal of help," he said.

The shadow justice secretary, Sadiq Khan, said Labour welcomed the "long overdue change of mind" that would allow the YJB to continue driving down youth crime.

"The YJB has been put under huge pressure this past year with the threat of abolition hanging over its head. It does an important job battling to reduce youth offending. It has a proven track record in reducing crime, which is why it was madness for the government to want to abolish it and why Labour and so many groups have campaigned for its survival with such determination."

However, Khan warned that its work was being undermined by cuts to youth offending teams.



## United States: Justices Support Youths' Rights in Police Questioning

From USA Today, Joan Biskupic, 17/6/11

WASHINGTON — The Supreme Court on Thursday bolstered the rights of young people who are questioned by police. In a 5-4 decision that goes to the heart of the longstanding Miranda warnings, the justices said the age of suspects must be considered when determining whether they would feel free not to respond to officers' questions and leave.

The 1966 *Miranda v. Arizona* ruling required police to tell suspects they have a right to remain silent and anything they say can be used against them. Yet, police need to read those warnings against self-incrimination only if a suspect is in custody.

Writing for the court, Justice Sonia Sotomayor said age is a critical factor in the custody test because adults and children experience police differently. "It is beyond dispute that children will often feel bound to submit to police questioning when an adult ... would feel free to leave," she said, adding that judges should not "blind themselves to that commonsense reality." Sotomayor was joined by the more liberal justices and swing-vote conservative Justice Anthony Kennedy.

Dissenting justices, led by conservative Samuel Alito, said the decision could lead to an "extreme makeover of *Miranda*."

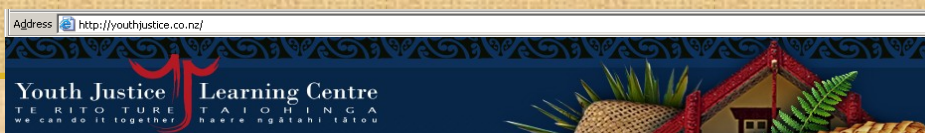
The North Carolina case involved a seventh-grader identified as J.D.B. who was taken from class by a police investigator and questioned in a conference room. During more than 30 minutes of interrogation by two police officers, J.D.B. admitted involvement in two home break-ins. He had earlier been seen near where the break-ins occurred and jewelry and other items were stolen. Lawyers for J.D.B. said his admission should be excluded from a hearing on breaking-and-entering and larceny charges because he had not been read his rights. North Carolina courts said the warnings were not needed because he was not in custody. They rejected arguments that his age, 13, should have been a factor in weighing whether he believed he was free to leave.

Reversing and setting a nationwide rule, the justices declared that a child's age must be considered. "This is not to say that a child's age will be a determinative, or even significant, factor in every case," Sotomayor said. "It is, however, a reality that courts cannot simply ignore."

She left it to lower courts to address if J.D.B. was "in custody," when questioned, taking into account his age. Joining her and Kennedy were Justices Ruth Bader Ginsburg, Stephen Breyer and Elena Kagan.

Dissenting, Alito noted that *Miranda's* custody rule rests on the idea that the risk of a coerced confession is higher when a suspect is arrested or unable to leave. He said the majority complicated the analysis by requiring one characteristic — age — to be in the mix when others, such as intelligence and experience with police, may be more pertinent in a case. Alito was joined in *J.D.B. v. North Carolina* by Chief Justice John Roberts and Justices Antonin Scalia and Clarence Thomas.

Remember, the Youth Justice Learning Centre lists all the youth justice training opportunities available in New Zealand, as well as a host of youth justice information, resources and links:  
[www.youthjustice.co.nz](http://www.youthjustice.co.nz)



### "Court in the Act"

is published by the office of the Principal Youth Court Judge of New Zealand.

Editor: Emily Bruce

Phone: (0064) 04 914 3465

Email:

[emily.bruce@justice.govt.nz](mailto:emily.bruce@justice.govt.nz)

[www.youthcourt.govt.nz](http://www.youthcourt.govt.nz)

We welcome contributions to the newsletter from anyone involved in youth justice in New Zealand or internationally.