



**13th IAWJ Biennial
International
Conference 2016
Washington DC, USA**

Hosted by the National Association of Women Judges, USA



**“Women Judges and the Rule of Law: Assessing the Past, Anticipating
the Future”**

Restorative Justice

Moderated by Judge Carolyn Henwood

Saturday 28 May 2016

10.15am – 11.45am

The term restorative justice

- Wide range of different concepts worldwide.
- A victim or cohort of victims of crime or wrong doings by others.
- What does it look like?

Resources

- Theory
 - Institute of Restorative Justice
www.restorativejusticeinternational.com
- Practice
 - Restorative Practices International
www.rpiassn.org
 - www.restorativejustice.org
- Paper by Professor Chris Marshall, Chair in Restorative Justice, New Zealand

Crime is more than just breaking
the rules...

It is about victims and the putting
right.

As an indigenous Process

- Practised for centuries by tribal groups and populations allowing individuals to dialogue and sort out wrongdoing.
- It is a human tradition where communities come together to work out differences, resolve conflict, repair harm and create justice.

Legally in criminal justice

- The state prosecutes and tends to focus on the offender by prosecution and sentencing.
- The victim is often on the side lines unless needed as a witness or give a victim statement on sentencing.
- Restorative Justice seeks to level the scales of justice by allowing victim input face to face.

How does restorative justice work?

Brings victims and offenders face to face in a safe way.

Victims need to know...

Why Me? I need to understand.

Harm done to me – I will tell you the impact.

How will you put this right? I need you to take responsibility.

How will you be made accountable?

There is opportunity to find peace and healing.

What does RJ offer the victim? (1)

1. Safe space to speak of their experience.
2. Validation and vindication.
3. Answers to their questions.
4. Voice their experience in their own words.
5. Holds offenders actively and directly accountable to those they have injured.

What does RJ offer the victim? (2)

6. Empowerment.
7. Overcoming isolation and reconnecting victims with a circle of care and understanding.
8. Restitution or reparation.
9. Reassurance that the same thing won't happen again.
10. Hope of a better future.

Offenders need...

- To be held accountable.
- To listen directly to the people they have affected.
- To express remorse.
- To apologise.
- To offer reparation.
- To answer the victim's questions.

The relationship

- Unwanted relationship.
- Chance for resolution.
- Does not always result in resolution.

A definition

- A process.
- Not alternative dispute resolution.
- Offender accepts responsibility.
- Offender and victim together in controlled environment, face to face in safe place.
- Victim tells of impact, damage, seeks answers, reparation and accountability.
- Offender offers remorse, gives answers and reparations.
- Individual needs considered.
- Outcomes will be fed into the Court process.

RJ in many settings

- The justice system – juvenile and adult.
- Family disputes.
- Child welfare issues.
- School discipline and bullying.
- Prison management.
- Environment.
- Constitutional – Truth & Reconciliation commissions, Treaty issues.
- Government agencies – schools, health systems, Police, defence forces.
- Complaints processes.
- Genocide and civil war.

Healing Strategies by Governments

South Africa

- Truth and Reconciliation Commission established 1996

New Zealand

- Waitangi Tribunal 1975

Aotearoa
New Zealand

Where in the world are we?





New Zealand Aotearoa
Open Spaces – Open Hearts – Open Minds

THE FILM ARCHIVE

Some NZ History

- Occupied by Maori for 800 years.
- Colonised in 19th century.
- Treaty entered into with indigenous tribes.
- Impact on Maori – Wars, land confiscations, alienation and despair.
- 1975 began to right the wrongs of the past with Waitangi Tribunal.

A recent state response

- Historic situations where children were taken by state from families and put into state institutions.
- Led to much of our criminal statistics.
- In 2007 Confidential Listening and Assistance Service established - invited New Zealanders to come forward and tell their stories – find files, counselling, referral for compensation.

A new youth justice system

Why?

- 60 years of paternalistic welfare legislation with little impact.
- Increasing numbers of young offenders sent to adult court.
- Maori frustrated with monoculture approach taking children from families and not dealing with children and families in cultural contexts.



Children Young Persons and Their Families Act 1989

Introduced the Family Group Conference

Outstanding Features

1. Allows a culturally appropriate response.
2. Does not bring children or young people to Court unless it is in the public interest.
3. Large diversion – 80% - Police commitment.
4. “Not deny”.
5. Family Group Conference the key mechanism.
6. A timely process.
7. Supported by government department resources.

Outstanding Features (cont...)

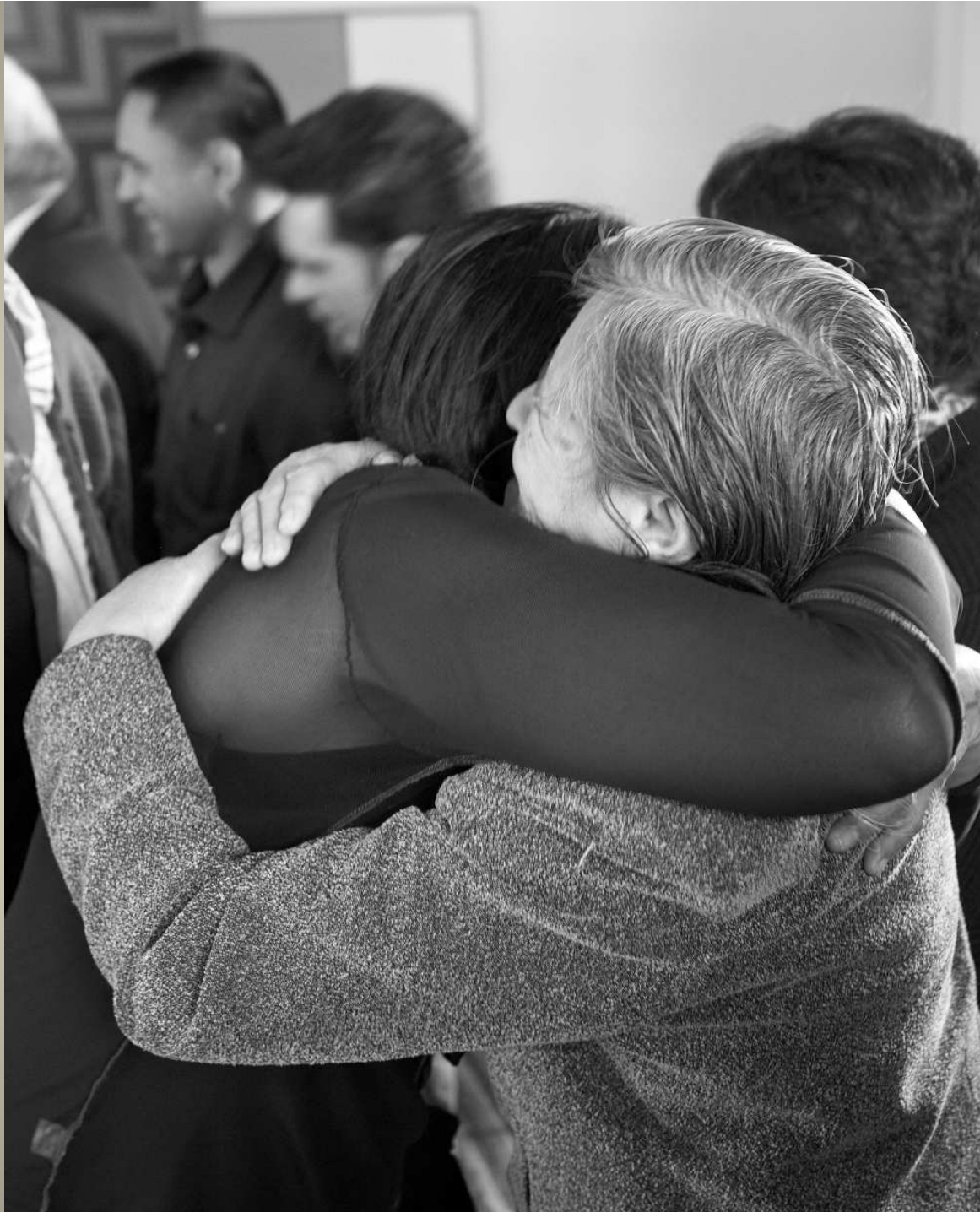
8. Strong family and whanau support.
9. Victim involvement.
10. Specialist Police and lawyers.
11. Desired outcome is accountability.
12. Addresses the underlying causes of offending.
13. Assists in developing the young person in socially acceptable ways.
14. Judicial monitoring – kept in Court.
15. A discharge as if not happened if the plan completed.



The Family Group Conference (FGC)

“The Jewel in the Crown”

- The FGC is the mechanism.
- The offender and the victim have a face to face meeting in a safe environment with their families and support people, together with Police and lawyers to resolve the offending and bring a plan back to the Judge for endorsement.



Disposition

Judge monitors the outcome and final disposition of the case.

Dispositions may include a discharge as if it did not happen.

A formal sentence or referral to a higher court for imprisonment occurs in rare cases.



Not a misdemeanour Court

- The Youth Court can deal with every crime except for murder and manslaughter.
- Case study – aggravated robbery where a young man robbed the local dairy with a wheel brace hitting him over the head causing serious injuries.

EFFECTS

OF

CRIME

① THE MAIN REASON THE REASONING OF JUMPING INTO A STOLEN CAR.

- Jumping into a stolen car could cause an accident and death.
- And it could of caused an accident where a innocent person in public may be badly hurt or death.



② LIST AND EXPLAIN WHAT SKILLED JENES I RECEIVED FROM MY MUM AND FROM THE POLICE.

- I was given 3rd conditions such as Character Community Justice and Effects of Crime project.
- I was given 100 hours.
- My punishment from my mum was I was not allowed out at all.



③ THE EFFECTS THIS HAD ON MY MUM

- It shocked her out.
- She was shocked.
- She got upset.
- She got upset.

THE EFFECTS THIS HAD ON MYSELF

- I was.
- I was to do it again.
- I was motivated in myself.
- I got that twice.
- It caused me to be that because the way I wanted about myself.



④ WHY I JUMPED INTO A STOLEN CAR?

Because I wanted to see my friend and go to the beach on a nice sunny day.

- Also wanted to go for a ride.
- Have some fun.



⑤ GIVE EXAMPLES OF WHAT WOULD HAPPEN IF I WAS AN ADULT.

- If I was an adult I could go to jail when caught and with a bad record that would affect my future in a career.
- I could get on for with a lot.



⑥ WHAT HAVE I LEARNED FROM THIS INCIDENT AND HOW DID I LEARN FROM THIS?

- I've learnt not to jump into a stolen car again.
- Think twice.

- Having had conditions and in my 100 hours helped me learn from this.

- Being an unpaid apprentice from going out with my friends and I don't want to be as it again.

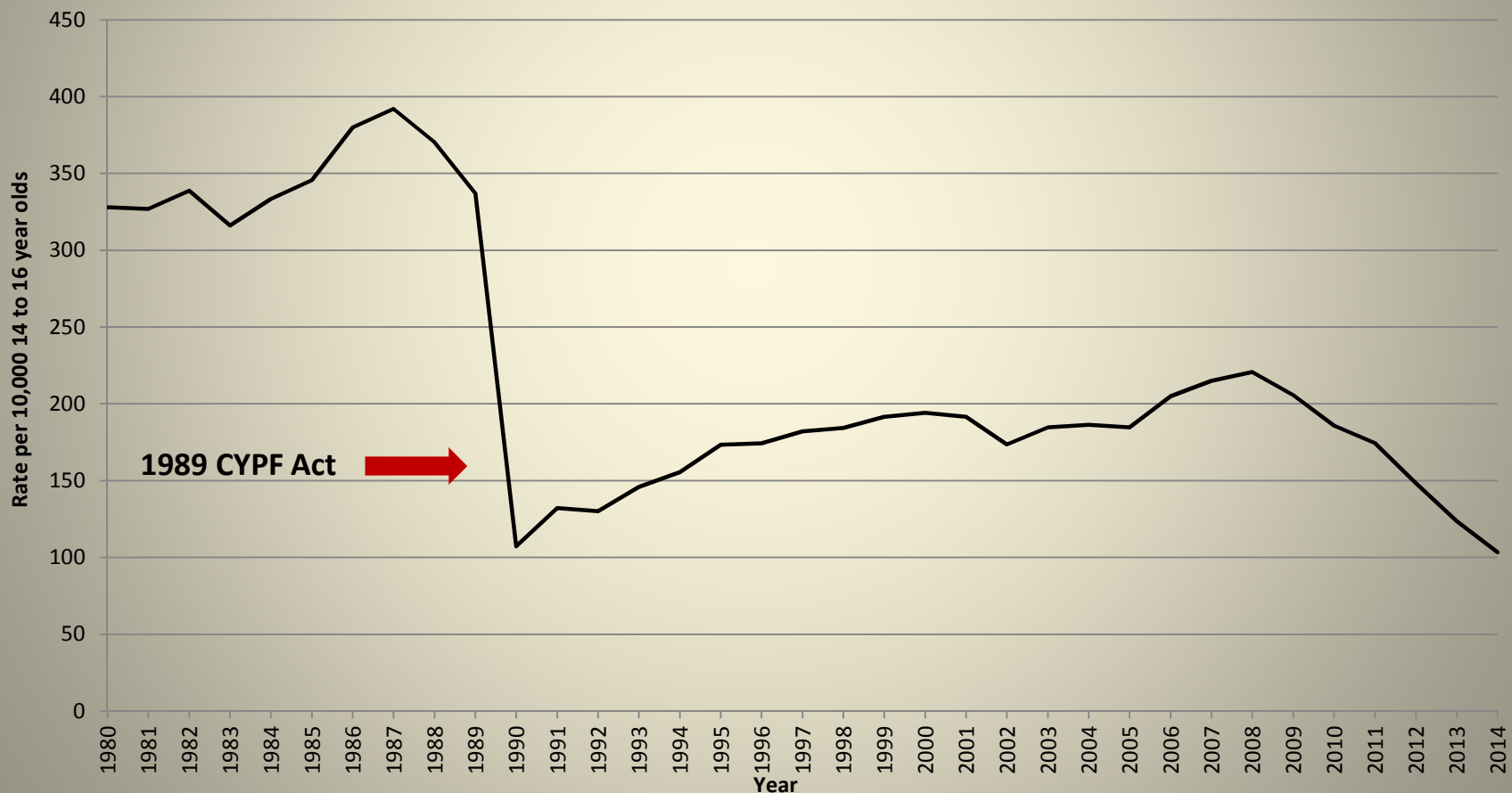


⑦ MY GOALS FOR THE FUTURE.

- Stay in school till year 13.
- Get a good job.
- Not be on bail again.
- Don't get distracted from school.
- Get all my NCEA's.
- Ignore hopping into a stolen car or committing any crime.

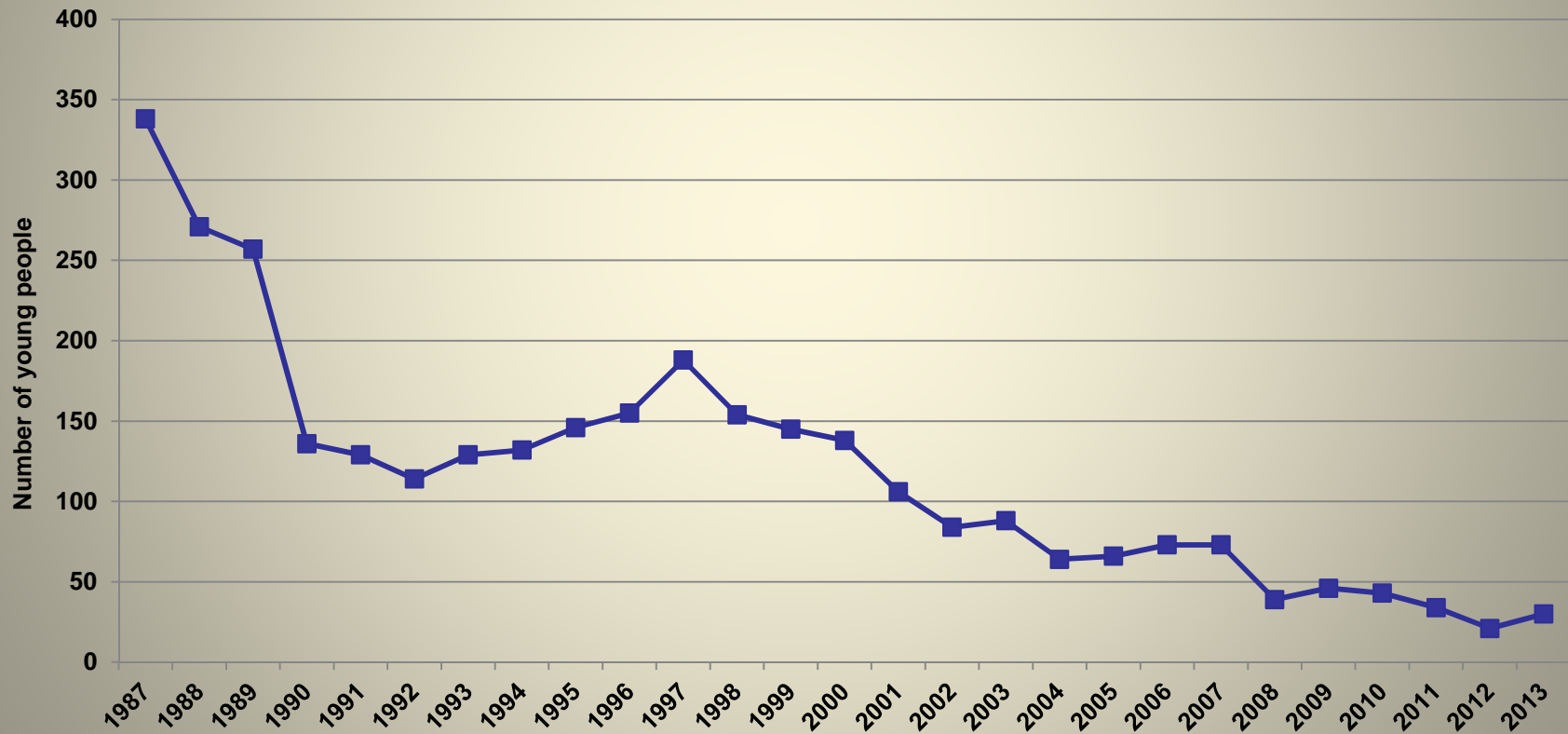
Has it worked for us?

Rate per 10,000 population of 14-16 year olds, appearing in the NZ Youth Court



The effect? Reduced Custodial Responses/Institutionalisation

Number of young offenders who were sentenced to corrective training or imprisonment , 1987 to 2013



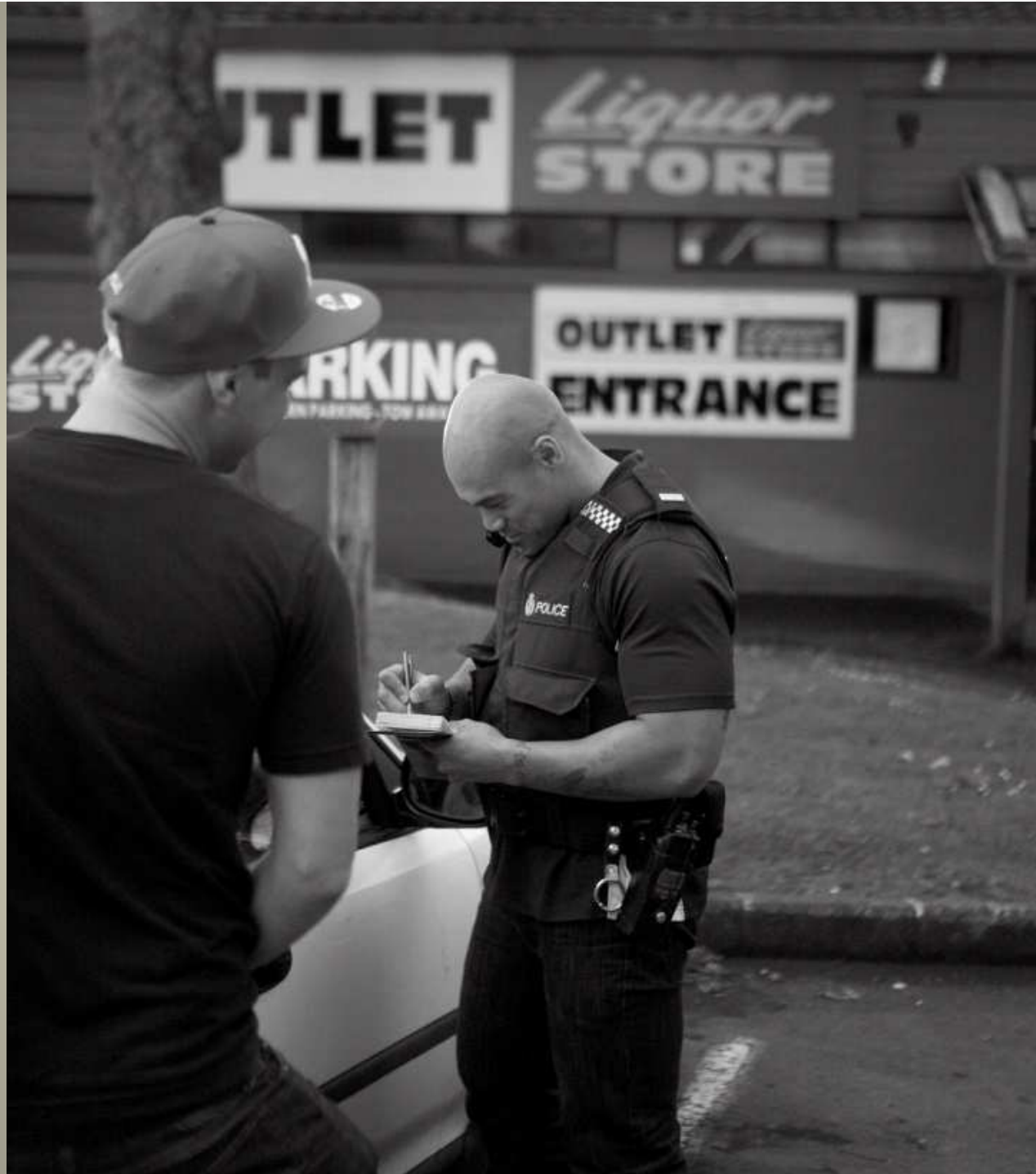
Minister of Justice reports 2016

- “Policies to tackle youth crime are succeeding with the number of children and young people appearing in New Zealand’s courts dropping by more than 60 percent since 2007/8...”

New Zealand Minister of Justice, Hon Amy Adams, 3 March 2016

Can we do better?

- In operational matters – monitoring, professional development.
- Engagement with Maori tribes.
- Repeat offenders with very complex needs.
- Resource allocation.
- Leadership of the youth justice sector.
- Raising victim attendance.
- Raising attendance of extended family members.



Can we do better for victims?

22% of victims attend FGCs in person.

39% of victims make written submissions.

Where victims do attend:

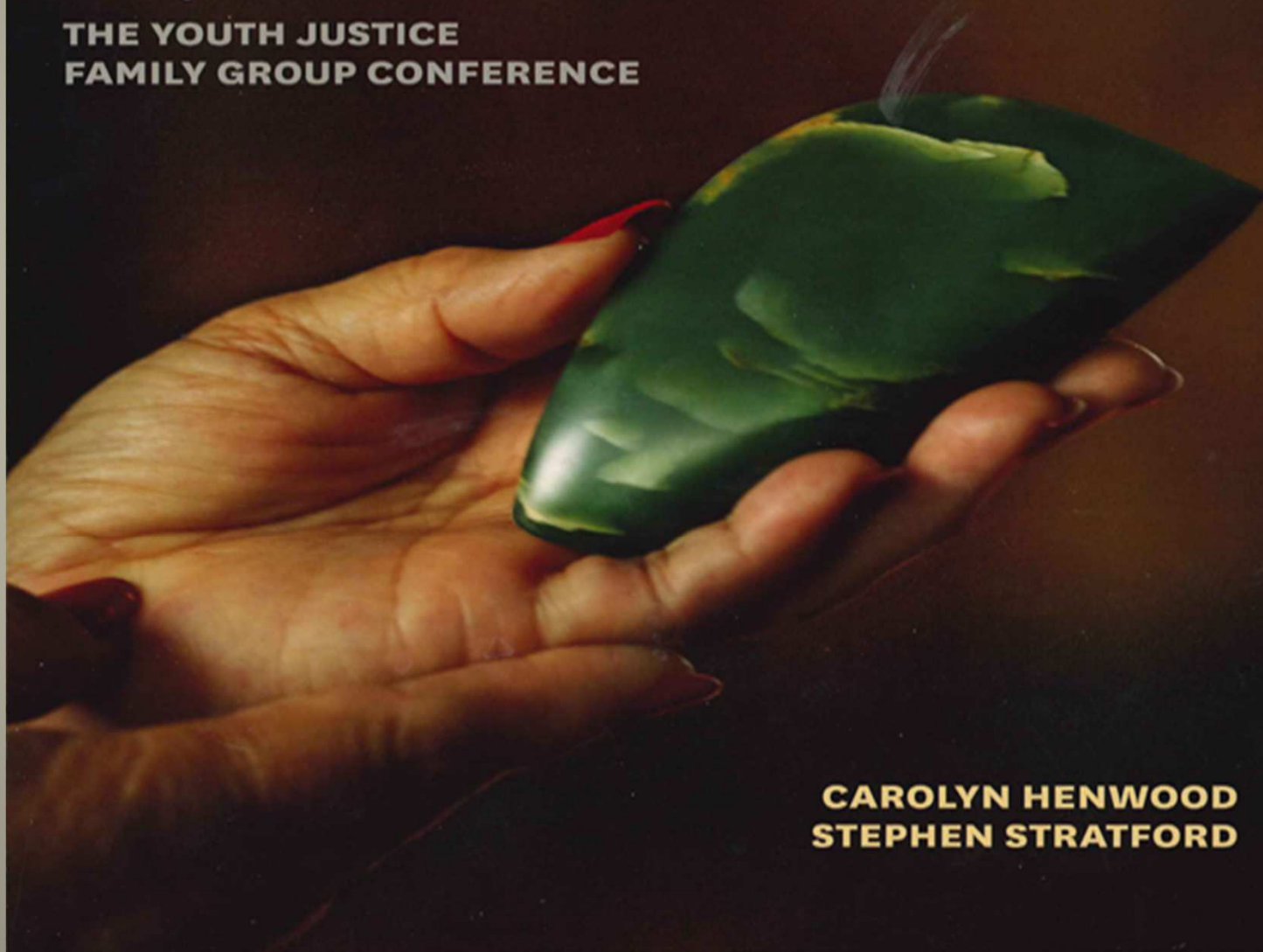
83% reported having had a chance to explain the effect of the offending on them.

86% reported having had the opportunity to say what they wanted.

71% of victims claimed their needs were met.

New Zealand's Gift to the World

**THE YOUTH JUSTICE
FAMILY GROUP CONFERENCE**



**CAROLYN HENWOOD
STEPHEN STRATFORD**

Panel Questions

1. In New Zealand the Police and the Prosecution are an essential component for any court case which involves restorative Justice.

Do police, prosecutors, or victims participate in your restorative justice program and if so, what role do they play?

What about the offender's parents or family?

If the offender does not have supportive parents, are there others who can support the offender?

2. It is generally viewed as essential for victims to be involved in a restorative justice process.

What is the victim's role in fashioning an acceptable outcome?

How does your court program provide easy access to the restorative justice process for victims of crime?

Follow up questions (Question 2):

Have you found victims and their advocacy groups receptive to the restorative justice concepts?

And where they may have been hesitant beforehand, have you seen a shift in attitude once they have participated in the process?

3. In dealing with families or tribal entities, how to you identify and invite “the critical stakeholders” to bring them to the restorative justice forum?

One of New Zealand’s difficulties has been to continue to engage effectively in this area.

4. How do you deal with different cultural responses to the restorative justice process?

In some cultures there is much shame that is associated with the process.

How do you get past that, or other issues, to allow a healing process to start?

Purinea: waiata

The meaning...

*When the world and life is on top of you
weighing you down
reconnect with nature
to be free
of your worries and shackles
and all that binds you.*