GOING TO COURT CAP IN HAND: A PRELIMINARY EVALUATION OF A COMMUNITY AID PANEL

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This paper canvasses recent moves and countermoves in juvenile justice in New South Wales. Discussion of the development of the police/magistrate initiative of Community Aid Panels (CAPs) is then undertaken within this context. In particular, this paper reports on the results of a small research project carried out at one metropolitan Sydney CAP. Questions are posed about the need for further investigation of the role and function of CAPs if they are to remain part of the juvenile justice system in New South Wales.

> "The Panel took time to understand. ... It is definitely worthwhile."
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> "The Panel was useless. I had to wait there for 5 hours before they saw me. Then I was only in there for 3 or 4 minutes and they gave me 20 hours. I shouldn't have been charged. I helped some people push a car across the road and was charged with conveyance. I never got a caution."
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> "In certain situations the CAP is a good alternative to court. It's a good opportunity to wipe the record. ... It would work well as a screening panel before the kids go to court."

(Comments by parents and young people who had appeared before a Community Aid Panel).

1 INTRODUCTION

Over the past three years a number of reports[1] have been released by both government and independent bodies outlining the state of juvenile justice in New South Wales, pointing out problem areas and making recommendations for reform. Prior to the commencement of the current legislative framework (in 1988) there was also much agitation for reform of the previous provisions,[2] which, it was said, blurred the boundaries between "welfare" and "justice". The 1987 package of legislation was hailed as a significant advance over

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1 Recent reports on juvenile justice in New South Wales are (a) Parliament of New South Wales Legislative Council, Standing Committee on Social Issues, *Juvenile Justice in New South Wales*, Sydney, 1992 (Social Issues Committee); (b) Youth Justice Project, *Kids in Justice: A Blueprint for the 90's*, Youth Justice Coalition and Law Foundation of New South Wales, Sydney, 1990 (*Kids in Justice*); and (c) Human Rights and Equal Opportunity Commission, *Our Homeless Children*, HREOC, Sydney, 1989 (The Burdekin Report). The National Youth Affairs Research Scheme publication, *Perceptions of the treatment of juveniles in the legal system*, National Clearinghouse for Youth Studies, Hobart, 1992 (NYARS) reports on research undertaken in Queensland, Victoria, Tasmania and Western Australia. The Royal Commission into Aboriginal Deaths in Custody [*National Report*, AGPS, Canberra, 1991 (RCIADIC)] also inquired into and made a number of recommendations on the treatment of young aborigines in the juvenile justice system in New South Wales and elsewhere.

2 *Child Welfare Act* 1939; the largely unproclaimed *Community Welfare Act* 1982.

the previous provisions. In particular, the new legislation appeared to clearly separate child welfare from juvenile justice.[3]

However, gaps remain in the legislative framework.[4] For instance, the legislation fails to provide adequate details about a number of key issues; implementation has to be determined by procedural guidelines which have no statutory basis. An obvious example of this is the police cautioning scheme, introduced in 1985 and determined in practice largely by the Police Commissioner's Instructions.[5] A range of important matters continues to be regulated either wholly or partially by (often unstated) policies and informal practices.

Juvenile justice is administered by a disparate range of agencies and, until very recently, there has been a distinct lack of co-ordination and coherence.[6] It is not surprising, therefore, that juvenile justice policies and practices have been characterised as uneven, unpredictable, unjust, and sometimes contradictory. Pragmatism and personal politics have often taken priority over reasoned debate and principled commitment to the development of a centrally co-ordinated approach aimed at ensuring justice and fairness for all young people.[7]

One of the most significant moves undertaken since the release of *Kids in Justice* was the establishment, in early 1992, of the Office of Juvenile Justice (OJJ) in the Department of Corrective Services. After representations by various groups in November 1991 the OJJ became independent of the Corrective Services Department, and now reports directly to the Minister for Justice. A Juvenile Justice Advisory Council (JJAC)[8] was also formed in late 1991. The JJAC was one of the major new bodies recommended in Kids in Justice. The OJJ now operates as a central body under the direction of the Minister for Corrective Services, who is in turn advised by the JJAC.[9] It is to be hoped that this move will result in future minimisation of many of the previous problems in co-ordinating policy development and

3 See, for example, Blackmore, R, *The Children's Court and Community Welfare in New South Wales* (1989) at Chapter 1, "History of children's legislation in New South Wales" for an account of the changing face of legislation applicable to children.

4 The legislative "package" which came into operation in 1988 includes the following acts: *Children (Criminal Proceedings) Act* 1987; *Children (Community Services) Act* 1987; *Children (Detention Centres) Act* 1987; *Child Welfare Act* 1987; *Children's Court Act* 1987. All other legislation defining criminal offences such as the *Crimes Act* 1900 (NSW), *Summary Offences Act* 1988 (NSW), etc is applicable to children as well as adults who allegedly commit criminal offences. The harsh and often unnecessary application of the provisions of the *Summary Offences Act* 1988 to young offenders has often been criticised, most recently by the Standing Committee on Social Issues (above n1).

5 See, for example, Cunneen, C, "An Evaluation of the Juvenile Cautioning Programme in New South Wales" (1988), to be published in Findlay, M and Yeo, S (eds) *Issues in Crime Control*, Institute of Criminology, Sydney.

6 See, generally, *Kids in Justice* (above n1), Chapter 3, "The System of Juvenile Justice" and in particular page 87 where the report states, "There is no single agency with primary responsibility for co-ordinating the efforts of the various agencies involved".

7 See, for example, Clark, J, "Whose Justice? The Politics of Juvenile Control", (1985) 13 *International Journal of the Sociology of Law* 407; Naffine, N, Wundersitz, J and Gale, F, "Back to Justice for Juveniles: the Rhetoric and Reality of Law Reform", (1990) 23 *ANZ Journal of Criminology* 192; *Kids in Justice* (above n1).

8 The members of the Juvenile Justice Advisory Council (JJAC), are drawn from a range of government and non-government agencies, and administratively resourced through the OJJ.

9 While *Kids in Justice* recommended the establishment of a central co-ordinating body similar to the OJJ, it did not recommend that such a body be situated within the Department of Corrective Services.

implementation in juvenile justice. At the time of writing, a Green Paper, prepared by the working parties established by the JJAC to investigate, report on, and make recommendations about all areas of the juvenile justice process has been submitted to Cabinet for consideration. A positive response is eagerly awaited.

Community Aid Panels commenced operation prior to the changes outlined above and have developed in tandem with those reforms but largely outside their influence. Until the release of the report of the Social Issues Committee,[10] they have also remained largely outside the ambit of published evaluations of juvenile justice in New South Wales.

The panels have now been incorporated into stated government policy. Notwithstanding this, a plethora of groups and individuals working in the field of juvenile justice have expressed serious concerns regarding their operation and place in the system.[11] While CAPs could be characterised as part of the continuing uneven development of police practices towards young people, their position in relation to police policies concerning young people remains unclear.[12]

Although police policy development has improved markedly in recent years,[13] continuing practices in the policing of young people have been starkly illustrative of contradictory and uneven policy implementation.[14] Acting at the cutting edge of juvenile justice, police have the power to exercise an enormous amount of discretion in their street interactions with young people.[15] The difficulties facing policy advisers and the Commissioner in ensuring consistency in the exercise of such broad discretionary powers across disparate patrols in widely varying socio-economic and geographical areas are enormous.[16] As *Kids in Justice*

10 See n1.

11 See, for example, McDonald, J and Ireland, S, "Can it be done another way? A New South Wales Police Service Proposal for Change to the Juvenile Justice System", unpublished, October, 1990. See also Juvenile Justice Branch, 1989, 1990 (n21 below), and Section 2 (ii)(b) below.

12 It is uncertain whether CAPs are part of official *police* policy. A meeting to launch the CAPs and provide general government recognition was held in Sydney in June 1991. This was attended by supportive people, including the Premier, the Minister for Police and a number of Magistrates, including the Chief Children's Magistrate. However, various views on the value of CAPs are expressed within the Police Service itself, ranging from wholehearted to qualified support. Other officers prefer the use of pre-court diversionary strategies such as cautioning. Some favour the introduction of cautioning panels, designed to reduce the number of juveniles reaching the deeper end of the process. The pre-court cautioning panel operating at Wagga Wagga is an example of a police initiative in cautioning incorporating aspects of the New Zealand Family Group Conference model (see Section 2 below). This "Cautioning Panel" is often described as a "shaming and reintegrating mechanism": see Braithwaite, J, "Diversion, Reintegrative Shaming and Republican Criminology", Paper to the International Symposium, *Diversion and Social Control: Impacts on Justice, Delinquents, Victims and the Public*, Bielfield, Germany, November 27–29, 1991, and O'Connell, T, "Looking at New Initiatives", unpublished, paper presented to a Juvenile Justice Seminar, Shellharbour Council, 31 March 1992.

13 See *Kids in Justice*, above n1 at 212–227.

14 See, for example, *Kids in Justice*, RCIADIC, Burdekin Report (above n1), and, more generally, NYARS (above n1). See also Cunneen, C and Robb, T, *Criminal Justice in North West New South Wales* (1987), NSW Bureau of Crime Statistics and Research, Sydney.

15 See, for example, Social Issues Committee (above n1) at 163–169; Kids in Justice (above n1), Chapter 7, "Young People and Policing". See also NYARS (above n1), particularly Chapter 4, "The Police".

16 Unfortunately, for some groups of young people, these initial discretionary decisions have often had a detrimental effect on their future position in the network of juvenile justice. The extent and depth of this influence is usually unrealised and consequently unacknowledged by an individual police officer. For an

put it, ... although we found that there have been some important departmental initiatives in improving the relationship between police and young people, there are serious and continuing problems which need to be confronted. In particular, we found the regulatory system governing police practices to be in need of considerable reform. We found that in general the relationship between young people and police requires considerable improvement. We found a need to introduce a wide range of reforms to improve the protection afforded to young people in their relationships with police.[17]

Nonetheless, there is some evidence suggesting that many police are dissatisfied with the powers they possess in relation to the outcome of their policing of young people.[18] For example, the *Kids in Justice* report found that

> Central to police attitudes towards young offenders is the belief that they are not properly dealt with by the rest of the juvenile justice system. Penalties are regarded as derisory and ineffective.[19]

In 1987,[20] largely because of this police perception of leniency towards people who either admitted to or were convicted of minor offences in the Local Court, a police officer stationed at Wyong and the magistrate of the Wyong Local Court conceived the idea of setting up a panel system in which the local community could participate. These Community Aid Panels were planned to take advantage of the magistrate's discretion to adjourn a case for the preparation of pre-sentence reports. Both adult and juvenile first and minor offenders were to be given two choices on pleading guilty, either to discuss possible reasons for offending with a sympathetic CAP and decide together how to remedy the damage done by the offence and how possible future offending could be avoided, otherwise the case would proceed immediately to disposition. The idea has rapidly gained acceptance in many parts of New South Wales.

Apparently the idea of "community" involvement in decision making in the criminal justice system has gut level appeal, particularly to many who feel that the present system is largely ineffective in reducing perceived levels of crime. So rapid has the acceptance of the idea been that in one year (1991) the number of panels soared from 20 to 50! There are presently over 50 CAPs operating in New South Wales. More are planned for the near future, in both metropolitan and country areas. Each is co-ordinated by a member of the Police Service (often a General Duties Youth Officer) and draws on solicitors and members of the local community for membership. Where a juvenile (accompanied in most cases by a parent, guardian or other responsible adult) is before the panel, a young person may be included in

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extensive and revealing longitudinal study of this phenomenon with respect to Aboriginal youth in South Australia see Gale, F, Bailey-Harris, R and Wundersitz, J, *Aboriginal Youth and the Criminal Justice System: The injustice of justice?* (1990). See also *Kids in Justice* (above n1), Chapter 7, "Young People and Policing", and Cunneen and Robb (above n14).

17 *Kids in Justice* (above n1) at 212.

18 The NYARS report (above n1) is one of the few published pieces of research asking police about their attitudes towards young people. The research results indicate that, while some police admitted to using "too much violence" in interactions with young people, many considered that their powers with respect to court outcomes were minimal. See Chapter 4, "The Police".

19 *Kids in Justice* (above n1), at 241.

20 That is, prior to the introduction of the new package of legislation referred to above, which came into operation in early 1988.

the panel membership. Screening and training of those who volunteer to sit on the CAPs has not been considered necessary.

The CAP program is said to "provide an opportunity for first offenders to make restitution to the community by participating in community projects, or by undertaking skills or living courses to remedy personal difficulties which may have led to the offence". CAPs aim to personally involve the community in "sentencing" and "rehabilitation" of offenders, and seek to "provide avenues for offenders to restore their confidence and self esteem after having been brought before the Court".[21]

Attendance at the panel is promoted as voluntary, agreed to after an initial appearance before the magistrate at which the person admits guilt. The magistrate then adjourns the case for approximately three months, during which period the volunteer attends the panel and as a result of a "full" discussion with the panel members on the background of the offence, agrees to voluntarily undertake some form of community work, or educational or rehabilitative program appropriate to the circumstances of the offence. When the case returns to court, the magistrate has the discretion to include the community work as a mitigating factor in sentencing.[22]

The place of CAPs in the scheme of juvenile justice in New South Wales is presently unclear. Are they a policing strategy or a function of the court? A sentencing mechanism or an indication of remorse for alleged offending? Who chooses CAP members? Who monitors their work? Who controls the outcomes? What meaning do juveniles attribute to a CAP appearance and its outcome? These and other questions are explored in this paper on the basis of the results of this research.

2 COMPARISON WITH SIMILAR SCHEMES

Panels of differing compositions and functions currently operate in the juvenile justice systems of three states — South Australia, Western Australia and New South Wales. A panel scheme of Family Group Conferences has been in operation in New Zealand since late 1989. All except the New South Wales CAPs operate as pre-court diversion or screening mechanisms. All except the CAPs have a legislative base.[23] This includes clear guidelines for the composition of the panels, categories of offence and offender suitable

21 All factual information in this section is taken from the pamphlet entitled *Community Aid Panels*, prepared by the New South Wales Police Service for publicity purposes (1991), and the Reports on the Evaluation of the Wyong Community Aid Panel Program prepared by the Juvenile Justice Branch, Department of Family and Community Services in 1989 and 1990, supplemented by personal observation, observation by a research assistant of a number of CAPs operating in the Sydney metropolitan region, and discussions with numerous individuals including lawyers, police, youth workers and panel participants.

22 The sentencing options available to the Children's Court are set out in s33, *Children (Criminal Proceedings) Act* 1987. They range from admonish and discharge through to detention at a Juvenile Justice Centre (formerly Detention Centre). A magistrate may order the young offender to perform community service only if this is considered to be appropriate as an alternative to custody.

23 *Children's Protection and Young Offenders Act* 1979 (SA), *Child Welfare Act* 1947 (WA), *Children, Young Persons and Their Families Act* 1989 (NZ).

for referral back to police for cautioning, panel adjudication, or court referral. Matters such as panel powers in relation to disposition of offenders are also set out.[24]

To date, the only evaluations (which have employed some level of statistical analysis) of Community Aid Panels have been undertaken by the Juvenile Justice Unit in the (now defunct) Department of Family and Community Services.[25] These evaluations were of the Wyong CAP only. Further evaluations have been carried out by the OJJ[26] but have not been publicly released.[27]

New South Wales Community Aid Panels are unique in that they do not claim to employ mediation techniques. Indeed, panel members are not given any training to carry out their task, let alone training in mediation. Schemes operating in other parts of the world[28] at a similar point in the system to the CAPs utilise trained mediators as an essential component. Comparison with these schemes is therefore of little value for the purposes of this paper.

A PRE-COURT PANELS

The scheme in South Australia consists of two panels, a Screening and a Children's Aid Panel. The operation of the South Australian panels has been extensively researched.[29] Foremost is the work by Fay Gale, Joy Wundersitz and Rebecca Bailey-Harris. This work, carried out over many years, gives the most detailed analysis of the issues surrounding the operation of these panels.[30] The studies are principally concerned with the involvement

24 For a comprehensive discussion and critique of the panel systems operating in South Australia and Western Australia and a thoughtful comparison of the benefits and drawbacks of panels and (police) cautions, see Seymour, J, *Dealing With Young Offenders* (1988) Chapter 6, "Informal Responses: Police Cautions and Panels".

25 See Juvenile Justice Branch, 1989, 1990: above n21.

26 Personal communication with OJJ officers.

27 A report on magistrates' attitudes towards the CAPs was prepared by the Deputy Chief Magistrate, Ms Angela Karpin, in 1990 which I understand is in the hands of the Attorney General. The recommendations about CAPs made by the Social Issues Committee (see n1, and Section 2 (ii)(b), below) are based on observations of a number of operating CAPs, and evidence presented to the Committee's hearings by a range of interested parties.

28 Generally victim offender mediation schemes occupy roughly the same position in the criminal justice process as CAPs. These have operated as adjuncts to the systems in Canada, the United States and the United Kingdom since the early 70s. See, for example, Wright, M and Galaway, B, *Mediation and Criminal Justice: Victims, Offenders and Community* (1989), which describes their development, presents the conflicting arguments, and reports on evaluative research on many of the projects. See also Umbreit, M and Coates, R, "The Impact of Mediating Victim — Offender Conflict: An Analysis of Programs in Three States" (1992) 43 *Family and Court Journal* 21, and Murray, G, *Mediation and Reparation within the Criminal Justice System: a Discussion Paper which explores issues surrounding Victim-Offender Mediation and Reparation*, Department of the Attorney General, Queensland, August 1991. In New South Wales, a pilot scheme in which police referred young offenders to a Community Justice Centre as an alternative to administering a formal caution began operation in 1987. This project was short-lived. It was discontinued in 1988 after the election of the Greiner Government. See Heslop, J, "Diverting young Offenders from the formal Justice System", paper presented to the Australian Institute of Criminology Conference, *Preventing Juvenile Crime*, Melbourne, July 1989.

29 See, for example, Seymour (above n24); Nichols, H, "Children's Aid Panels: an appraisal of the system" (1979), 2 (6) *Australian Child Protection Council Forum* 4; and "Children's Aid Panels in South Australia", in Borowski and Murray (eds), *Juvenile Delinquency in Australia* (1985).

30 See n16. See also Wundersitz, J and Naffine, N, "Pre-trial negotiations in the Children's Court" (1990) 26 *ANZ Journal of Criminology* 329; Wundersitz, J, Naffine, N and Gale, F, "The Production of Guilt in the

of Aboriginal youth in the criminal justice system and utilise official crime statistics for the period 1979–1984. Unlike New South Wales, where official records going back over the years are neither accurate nor extensive, juvenile justice records in South Australia can be relied on to "present an accurate picture of the operation of the official justice process and the treatment received by minority groups as they pass through it".[31] Gale, Wundersitz and Bailey-Harris found that, compared to other groups of young people, Aboriginal youth were more likely to be arrested than warned or cautioned, more likely to be referred to court than a Panel, and more likely to be sentenced to detention.[32] The importance of their findings for this paper is that they highlight the tendency of diversionary measures to be discriminatory in their operation, in particular towards Aboriginal youth.[33] Research to date has not been sufficiently developed to determine whether this is the case in New South Wales. However, this paper does suggest that there is preliminary evidence which indicates that police may be arresting and charging when the most appropriate response should be a caution. Whether this decision is discriminatory, either along race or gender lines, clearly warrants investigation in light of the South Australian findings.

Western Australian Children's (Suspended Proceedings) Panels are specifically designed to avoid the appearance of first offenders before a Children's Court. Their jurisdiction covers only first offenders under 16 years. A representative of the Police Department and one from the Department of Community Services sit on the panel. The panel may either deal with the matter itself or refer the matter to court. There are few published studies evaluating their operation.[34] However, Seymour's work suggests that the involvement of police may raise serious conflicts of interests, especially in smaller towns where the arresting officer may also act as the police representative on the panel. Again, this issue is not directly addressed in this paper, but should be considered in any future research on CAPs.

Unlike CAPs, evaluation schemes were included from the outset in the New Zealand scheme of Family Group Conferences (FGCs).[35] Thus, though the scheme has only been operating for just over a year, it is possible to chart its effectiveness on the basis of official evaluations.[36] These indicate that, after 9 months in operation, there was already a dramatic

Juvenile Justice System: The Pressures to Plead" (1991) 30 *The Howard Journal* 192. Gale, Bailey-Harris and Wundersitz (1990) examined the operation of the criminal process, rather than patterns of offending behaviour, using a methodology which "enabled [them] to go further and seek explanations for the dramatic figures which [their] research revealed" (Preface).

31 Gale, Bailey-Harris and Wundersitz, above n16 at 3.

32 Id. See also Figures 1 and 2, at 4 and 5.

33 See also RCIADIC, above n1.

34 Seymour, above n24 at 248–250, outlines the operation and powers of the Western Australian panels. The 1991 Western Australian Legislative Review report entitled *Laws For People* recommended that the Children's (Suspended Proceedings) Panels be replaced with a formal police cautioning system. See White, R, "Taking Custody to the Community: The Dynamics of Social Control and Social Integration" (1991) 3/2 *Current Issues in Criminal Justice* 171 at 175.

35 A point on which the Social Issues Committee relied in its recommendations about the establishment of Children's Panels as a replacement for CAPs.

36 See, for example, Maxwell, G and Morris, A, "Juvenile Justice in New Zealand: A New Paradigm", unpublished, October, 1990, and Maxwell, G and Robertson, J, "The First Year of the Children, Young Persons and Their Families Act 1989", A Report from the Office of the Commissioner for Children, unpublished, May 1991.

reduction in the number of matters going to court,[37] in conjunction with a 70 per cent police cautioning rate.[38] Only 9 per cent of young people were entering the New Zealand system by way of arrest. More than $1,000,000 in reparation payments had been made to victims by young offenders and their families.[39]

These official evaluations also found that, while "patterns of detected juvenile offending remain[ed] unchanged", diversion was being used much more frequently and widely by the police. Police also appeared to have "accepted the decisions and plans" arrived at by the FGCs as "alternatives to prosecution".[40] Unlike the CAP arrangement, police are participators in, rather than organisers of, the FGCs.

B COMMUNITY AID PANELS

i) FACS' Evaluations

Broadly, the FACS' evaluations of the Wyong panel were critical of its composition, functioning and assumed powers.[41] They recommended that further evaluation and possibly a legislative base should be considered. Further, they did not consider that the CAP's claims to success were grounded in any reliable empirical evidence or that the panels should necessarily become an official part of the juvenile justice system. The summary of the 1989 report said:

> From the data examined on the re-offending rates of these (sic) cautioned by Police, and those appearing before the panel there does not appear to be a great difference in success rates. When consideration is given to the offences for which the persons have appeared before the panel it is even more obvious that many offences could have been dealt with by less expensive and time consuming police cautions.
>
> If the scheme is to continue, it appears that a gatekeeping mechanism needs to be introduced to minimise client net-widening and that consideration should be given to utilising the CAP as a pre-court mediation/diversion system to minimise the cost of operating the system.

37 A 63 per cent fall. Only 13 per cent of cases in New Zealand now go to court. The equivalent New South Wales figure is higher than 80 per cent.

38 New South Wales statistics indicate that police cautioning rates fall considerably below 70 per cent, although accurate figures are hard to obtain since OJJ and Police records contradict each other quite dramatically. What is clear is that the practice of cautioning varies considerably between police districts (unpublished data prepared for Juvenile Justice Advisory Council Police Working Party). To date, there is no research on whether at least a proportion of this variation can be attributed to the existence of CAPs.

39 Hogan, M, "Juvenile Justice in New Zealand: A Model for New South Wales" (1991) 15 *Caring* 8 at 10, based on Maxwell, Morris et al, above n36.

40 Maxwell and Morris, above n36.

41 Juvenile Justice Branch (1989, 1990) above n21. The 1990 report outlined the following concerns: lack of legislative base; confidentiality of records; net-widening effects; targeting of particular offenders/offences; and relationship with police cautioning scheme.

ii) Social Issues Committee Recommendations

Almost since the inception of the first CAP in Wyong in 1987, there has been concern about theoretical, ideological and organisational issues arising from the impact of CAPs on young offenders. Lawyers working with young people,[42] the Youth Justice Coalition,[43] police,[44] and Young Offender Support Team (YOST) workers from the (then) Department of Family and Community Services[45] have all been part of the chorus of dissenting voices. These groups, in addition to other individuals and groups supportive of the operation of CAPs, contributed to the long and detailed inquiry into juvenile justice in New South Wales carried out by the Social Issues Committee.[46] This Committee also visited and observed the operation of a number of CAPs. They recommended that CAPs be phased out over a period of two years and be replaced by a strictly pre-court system of Children's Panels which are to be implemented gradually, and monitored and evaluated regularly by professional researchers.[47]

3 RESEARCH METHOD

Research on Community Aid Panels is limited primarily by the varying nature of the panels themselves. The choice of the community people who form part of the pool from which a particular panel is drawn is often arbitrary and may be capricious. The combination of people forming a particular panel may also be problematic.[48] Results from an analysis

42 Some of the stories told to solicitors by their young clients who had appeared before a CAP indicated that some police were far exceeding their powers as a result of participation in CAP hearings — one story concerned a young person who reported that a police officer had increased his hours of voluntary community work "on the spot" because the young person was seen in an area from which he had been banned.

43 The Youth Justice Coalition identified the following issues in their submission to the Social Issues Committee Inquiry: 1. Misuse of the adjournment; 2. Welfare of the offender; 3. Voluntariness of offender's involvement with the CAP; 4. Community work as punishment; 5. Length of community service; 6. Confidentiality; 7. Pleading guilty; and 8. Lack of legislative base. (See Youth Justice Coalition, *Community Aid Panels*, unpublished, Sydney, 1990.)

44 See McDonald and Ireland, above n11.

45 Although it should be noted that in a workshop on community developments in juvenile justice in New South Wales at the Youth Action and Policy Association 1991 Annual Conference, a range of conflicting views on the value and future of the CAPs were aired by community legal and youth workers from the both government and non-government sectors, some of whom were members of CAPs established in their local areas.

46 See n1.

47 Interestingly, in a dissenting opinion, three members of the Committee (Ann Symonds MLC, K Enderbury MLC and Elizabeth Kirkby MLC) considered that the CAPs were "fundamentally flawed". They recommended that the "CAPs be immediately disbanded, since they competed with police cautioning and therefore inevitably contributed to net-widening". Additionally, they considered that "members of CAPs, while well-intentioned, are simply inadequately trained in mediation or in dealing with the complex causes of juvenile offending". They further considered that "insufficient guidelines, let alone a legislative base, exist in the operation of Community Aid Panels throughout the state. This results in considerable differences in the experience and suitability of panel members and wildly differing de facto "sentences": Social Issues Committee, above n1 at 199.

48 "[The panel] were all different people — about 6 of them ... They all had a different attitude — everyone clashed", according to one young person interviewed during the course of this research.

of decisions arrived at by one panel, particularly those concerning levels of punitiveness, are not easily generalisable to other panels sitting in different police districts.

With these limiting considerations in mind, this research project was formulated in order to constitute a first step in investigating some of the issues raised by the Youth Justice Coalition[49] and by the evaluations carried out by FACS.[50] It was also hoped that the results could also provide some tentative and preliminary answers to the questions posed by some police CAP co-ordinators.[51]

The issues of particular importance were the relationship between the number of young people appearing before a particular CAP and the levels of cautioning in the respective police district; and voluntariness, both with respect to the decision by a young offender to appear before a CAP, and the agreement to and carrying out of the community work suggested by the CAP. Claims that CAPs effectively reduced recidivism rates also required investigation.

Fifty-nine young people who had appeared before one Sydney metropolitan CAP during the first half of 1991 were contacted by telephone. Each was asked if they would like to participate in the research. Only 35[52] young people agreed to be interviewed — some of the 59 could not be contacted while others declined to participate. The survey consisted of 15 open-ended questions,[53] which canvassed prior cautions, the perceived voluntariness of appearance before the CAP and of the work suggested, reoffending, and changes in attitudes towards the panel, the police and the community. After responding to these specific questions, the young people were asked if they wished to comment generally on the experience of going before the panel. Where parents wished to contribute, their comments were recorded. Some of the responses to the questions by the young people and additional comments by parents are woven through the text of this paper.

4 RESULTS

A PRIOR CAUTIONING

Thirty-four respondents were able to say whether they had received a prior caution from the police. One said they could not remember whether they had previously received a caution. As the question did not distinguish between a warning and a caution, some respondents may have equated these two possible police responses. The results are set out in percentage form in Table 1.

49 See n43.
50 See n41.
51 The research included discussions with police who were co-ordinating CAPs.
52 A 59.3 per cent response rate.
53 Listed at the end of this paper.

Table 1: Prior Cautions

	No.	per cent
Yes	18	52.9
No	16	47.1
Total	**34**	**100.0**

Three of the 16 (18.8 per cent) who said they had not previously been cautioned were first offenders.

B REASONS FOR APPEARING BEFORE PANEL

The question asking why the respondent had appeared before the panel was usually answered by giving the name of the person who had influenced the decision most — magistrate, parent, solicitor, police, or a combination of people. The responses are set out in Table 2. One young person did not respond to this question.

Table 2: Reasons for "choosing" CAP option.

Reason	No.	per cent
Magistrate suggested it	6	17.6
Magistrate promised a lighter penalty on return to court	14	41.2
Solicitor suggested it	9	26.5
Parent suggested it	2	5.9
Magistrate and solicitor suggested it	1	2.9
Magistrate, solicitor and parent all suggested it	1	2.9
Magistrate and police suggested it	1	2.9
Total	**34**	**99.9**

The results set out in Table 2 suggest that magistrates exert a major influence on the young person's decision to agree to appear before the panel. Significantly, just under half of the young people agreed to appear before the CAP because they believed that the magistrate promised a lesser penalty on return to court if they did so. A typical response

for these cases was "The Magistrate told me that I had an option to do the Community Aid work as suggested by the panel and not get a record, or to get a fine and a record".[54] A combination of the first two responses suggests that almost 60 per cent of the respondents agreed to appear because they believed that this course was suggested by the magistrate, with or without a promise of leniency. Combining all responses which included "magistrate" results in over two-thirds[55] of these decisions to appear being influenced to some extent by a magistrate. Statistical analysis suggests that the influence exercised by a magistrate on this purportedly voluntary decision is significant for more than half the total number of young people seen by this panel.[56] Analysing the results from the second row of the table only, it is arguable that at least a quarter[57] of all decisions to appear before this CAP were probably influenced by the young person's belief in the magistrate's promise of a reduced sentence. One of the most worrying of the responses to this section of the questionnaire was that of the young person who claimed that "The Magistrate suggested it — he didn't explain that it was voluntary. Nobody did — the Panel didn't. I thought I had to do it or be put in a boy's home".

Solicitors also appear to have had a significant influence on the decision to appear. Almost a third[58] of the 35 young people interviewed said that their solicitor had advised them to choose the CAP option. Again, statistical analysis suggests that at least a quarter[59] of the decisions to appear by all the young people appearing before this CAP were influenced at least partly by comments made by their solicitor. One respondent replied "The solicitor said if I did the work that the conviction wouldn't be recorded. The Magistrate thought it was OK if I went".[60] The probability that some of these solicitors may be members of the CAP from time to time raises some interesting questions about their motivations for encouraging young people to agree to go before the CAP.[61]

54 Data in later tables include further analysis of answers to later questions for those 14 respondents who said that they believed that the magistrate had promised that their penalty would be reduced on return to court after the adjournment for the CAP.

55 67.5 per cent

56 Between 83.2 per cent and 51.8 per cent; $p = 0.05$.

57 Between 57.7 per cent and 24.7 per cent; $p = 0.05$.

58 32.3 per cent.

59 Between 40.3 per cent and 24.3 per cent; $p = 0.05$.

60 This statement shows some confusion on the part of the young person about the respective roles and powers of the solicitor and Magistrate!

61 These may include a desire on the part of the solicitor to ensure that the young person receives an "adequate and appropriate" response to the alleged offending. Some solicitors believe that the penalties imposed by the courts are too lenient. This is more likely to be the case where the solicitor practises only occasionally in the jurisdiction of the Children's Courts. Other solicitors may use the opportunity to be part of the panel which engages in a wide ranging debate on the young person's lifestyle, especially if this lifestyle is disapproved by the solicitor. Certainly, the power differentials existing in the CAP context give solicitors (and others) on the panel opportunities to exercise power inappropriately, to the extent that even some parents feel that the CAP experience is an unwarranted intrusion into their lives and the lives of their children. One mother said, "I wasn't impressed at all. They asked unnecessary questions and were prying. I felt like I was being interrogated for a crime I didn't commit. I really felt my privacy was violated unnecessarily".

C VOLUNTARINESS OF APPEARANCE

The respondents were asked whether they thought they had to appear before the CAP. Table 3.1 sets out the responses. Note that I have reversed the question in tabulating the responses. This more closely reflects the original concern that appearing before a CAP may not be a choice made freely, but one which is subject to influences outside the young person's control.

Table 3.1: Believed appearance voluntary

	No.	per cent
Yes	21	60
No	14	40
Total	**35**	**100**

Table 3.1 indicates that one and a half times as many young people considered that they were not obliged to go before the panel, as compared with those who considered they had no choice but to appear. However, a closer consideration of some of the replies indicates that, while the majority of these young people said that they had freely chosen the CAP option, that choice was often made on the basis of information provided to the young person which led them to believe that they would be treated considerably more leniently on return to court than if they had opted for continuance of the court appearance. This is indicated by the rider added to many of the replies of those who said their choice to appear before the CAP was voluntary: "I did it to have the record wiped"; or, "I'd rather go there than have a conviction recorded". One said "I did it so I wouldn't be fined. It was voluntary but the fines were over the top".[62] Another said, "It was voluntary. At first I didn't really want to do it but then I thought it would be better if I did". This comment was repeated by many of those who said they did not feel obliged to go before the CAP.

The responses of many of those who considered that they had no choice but to appear before the panel indicate that for these young people the pressure to choose the CAP option was obvious and enormous. Many said baldly "I had no option but to go to the CAP". Others realised that the offer of a lesser penalty was an enticement they could not resist. "I would rather have gone through the court but I was told this would give me a better chance"; "There was pressure from all directions — family, police, court". "Yeh — I had to go. I didn't know it was voluntary". Could it be said that this young person choice was voluntarily made on the basis of full information? This final comment indicates sheer lack of information — despite the fact that Police Service literature[63] says that no one is pressured to attend the CAP.

62 This young person believed that the magistrate had suggested that if he agreed to appear before a CAP he would not be fined on return to court. He was.

63 See n21.

Table 3.2 gives the results for this question for those young people who said that a magistrate had promised a lenient result.

Table 3.2: Voluntariness and belief that lenient disposition offered by Magistrate

	No.	per cent
Yes	10	71.4
No	4	28.6
Total	**14**	**100.0**

Over 70 per cent of the respondents who said their decision was influenced by a magistrate's promise of leniency thought that they were under no obligation to go before the CAP, according to the bare figures in Table 3.2. However, as indicated previously, many who gave this response also said that they "thought it would be best if they did". This indicates that the results as set out in this table need to be further researched; perhaps a different research design asking less ambiguous questions would yield more reliable results. Further, the research would need to be replicated at a number of different panels operating in a variety of regions. On the basis of this preliminary research, the most which can be said with any degree of confidence is that it is doubtful that appearances before this CAP are truly voluntary.

D COMMUNITY WORK SUGGESTED BY THE CAP

Two issues are of interest here. The first concerns the number of hours of community service work the young people appearing before this CAP were asked to perform (Table 4.1 and Figure 4.1). The second explores whether the agreement to perform this work was made voluntarily by the young person (Tables 4.2 and 4.3).

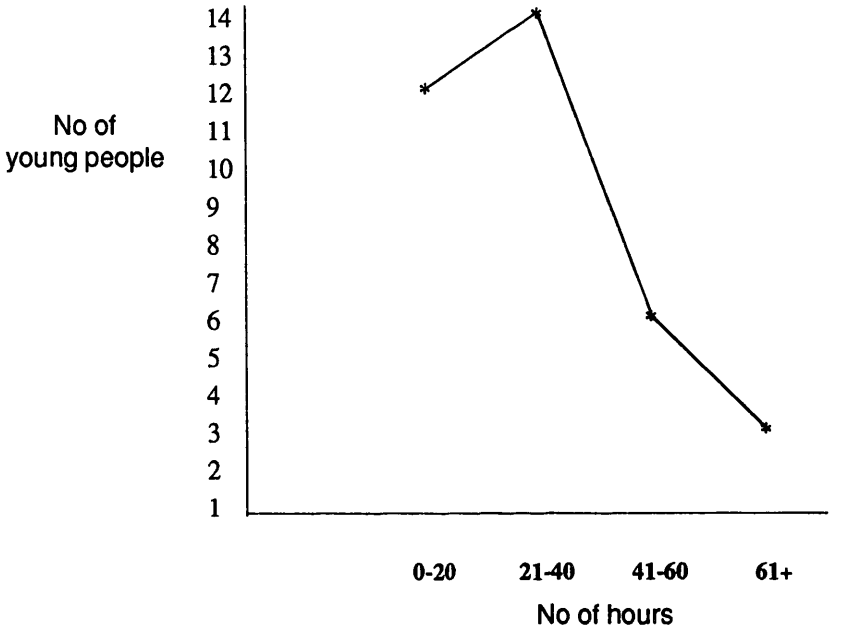
i) Number of hours of community work

Table 4.1 sets out the number of hours each young person agreed to perform. Figure 4.1 gives these hours as a frequency distribution. Only 33 responses are recorded in Table 4.1 and Figure 4.1. One young person did not state the number of hours suggested to them. The other missing respondent was not asked to perform community work but agreed to go to a counsellor for as long as either he or the counsellor considered necessary.

Table 4.1 Hours of community work

Hours	8	10	16	20	24	25	30	35	40	48	50	60	70	80
Frequency	1	1	4	6	4	2	1	1	6	1	1	3	1	1

Figure 4.1: Frequency Distribution



These results suggest that young people appearing before this CAP are being asked to perform between 25 and 35 hours of community work. At the meeting to launch the CAPs referred to earlier[64], the Chief Children's Court Magistrate, Mr Rod Blackmore, said he considered that the maximum number of hours suggested by a CAP should not exceed 20. Clearly, the hours being suggested by this one panel exceed that limit.

ii) Voluntariness

Table 4.2 sets out responses to the question of whether the young person considered the work suggested by the panel to be obligatory. Two young people did not respond to this question. Table 4.3 gives a similar breakdown of answers to this question for the 14 cases in which the young person indicated that they believed that the magistrate had promised them a more lenient penalty if they chose the panel option.

64 See n12.

Table 4.2: Work was voluntary

	No.	per cent
Yes	7	21.2
No	26	78.8
Total	**33**	**100.0**

Table 4.3: Magistrate effect

	No.	per cent
Yes	3	23.1
No	10	76.9
Total	**13**	**100.0**

These tables show that three times as many of the respondent young people considered that the work suggested was obligatory rather than voluntary, whether or not a magistrate held out the promise of a lower penalty on return to court. Clearly, a significant number of young people who appeared before this CAP considered the work to be a compulsory part of the panel experience rather than something about which they had a choice. Further research needs to be undertaken to test this hypothesis on a wider basis before any firm conclusions can be drawn.

E Is The CAP Experience a Deterrent?

Two different questions were asked here. The first merely inquired whether the respondents considered that their CAP experience had resulted in a resolve not to re-offend (Table 5.1). The second asked whether they had re-offended (Table 5.2), and, if so, whether they had been "caught" (Table 5.3). If they had not re-offended, they were asked to state whether they thought their behaviour was influenced by the CAP experience (Table 5.4).

Table 5.1: CAP a deterrent?

	No.	per cent
Yes	4	11.4
No	18	51.4
No Response	13	37.1
Total	**35**	**99.9**

Table 5.2: Re-offended since CAP

	No.	per cent
Yes	5	14.28
No	22	62.85
No Response	8	22.85
Total	**35**	**99.98**

A comparison of the results set out in Tables 5.1 and 5.2 indicates the possibility that some respondents may not have understood the question about the deterrence effect of a CAP appearance. Some said they knew what they had done was "stupid" without the need for the panel to tell them so. Generally, these respondents had not re-offended. One said "Well I couldn't really reoffend anyway — I'd be in a boy's home". This respondent said they had never previously been cautioned by police. Others said that even though they thought the panel experience was a deterrent, they had reoffended — but the new offence was different from the one for which they appeared before the panel! However, even assuming that the question was correctly understood, the proportion of "No responses", particularly in Table 5.1, makes the drawing of firm conclusions difficult. Nevertheless, if we take the results recorded in Table 5.1 on face value, the inference can be drawn that at least 4 times as many of the young people in this sample thought that the experience of going before the CAP and carrying out the work suggested did not constitute a deterrent to further offending than those who thought it did. This result, once again, needs to be carefully reassessed before any firm conclusions can be drawn.

Table 5.3: Reoffended and caught

	No.	per cent
Yes	3	60
No	2	40
Total	5	100

Table 5.4: No reoffence because of CAP

	No.	per cent
Yes	5	22.7
No	17	77.3
Total	**22**	**100.0**

Together with Table 6.2, Tables 6.3 and 6.4 indicate that very few of this sample have actually reoffended, but only a small proportion attribute their subsequent law abiding behaviour to the CAP. It is perhaps not surprising that a young person on whom the magistrate imposed a $400 fine in addition to the 20 hours of community service completed at the suggestion of the panel claimed to have reoffended since appearing before the panel. He also complained of different (and harsher) treatment in comparison with co-offenders. Another, who believed that the magistrate had promised to drop the charges if he appeared before the CAP, although considering that he was not informed about the possibility of choosing between CAP and court, had also subsequently re-offended. He indicated that he thought the whole thing was a waste of time: "They ask you questions and stuff and try to make you understand that you've done something wrong. But you realise that anyway".

F HONOURING THE PROMISE OF LENIENCY BY A MAGISTRATE

Finally, I examine the responses to the question asking whether the magistrate took into consideration the work done at the suggestion of the CAP.[65] The results are set out in Table 6.1. I also consider separately the responses for those cases where the young person indicated a belief in a promise of leniency by the magistrate. These results are in Table 6.2.

65 Eight of the respondents had not returned to court at the time of the survey. Their responses are included in the "No response" category.

Table 6.1: CAP work considered

	No.	per cent
Yes	25	71.4
No	1	2.9
No response	9	25.7
Total	**35**	**100.0**

The responses overwhelmingly indicate that these young people believed that magistrates took the work done at the suggestion of the CAP into consideration in deciding on the final disposition of their case. Interestingly, one of the respondents who considered that the magistrate had dealt leniently with him on return to court did not, in fact, do the work assigned to him by the CAP! Perhaps some magistrates consider that the experience of going before the CAP may be sufficient deterrent or punishment for some young people, whether or not the work is actually carried out. This may be attributed to a number of factors. Possibly the offence was trivial, or the young person showed remorse on return to court. Such factors would need to be controlled for in any future research.

Table 6.2: Magistrate effect

Promise kept	No.	per cent
Yes	10	71.4
No	1	7.1
Not yet returned	3	21.4
Total	**14**	**99.9**

The one "No" response is from the same young person who was allocated 20 hours by the CAP and ordered by the court to pay a fine of $400, even though this young person believed that the magistrate had promised not to impose a fine if they appeared before the CAP. Otherwise these results tend to suggest that, even though magistrates exert a significant influence on the young person's decision to appear before a CAP, often holding out the promise of a lighter ultimate penalty,[66] a significant proportion of this small sample believed that that promise was honoured.

66 See Table 2 and accompanying text.

6 DISCUSSION

A CAUTIONING

Police crime detection practices and methods of apprehension vary considerably from district to district;[67] consequently research indicating that the existence of a CAP in one area has an effect on police cautioning practices there may well not be generalisable to other geographical areas. Given the unreliability and variability of cautioning data itself,[68] considerable care needs to be exercised in seeking to apply results discussing this issue from research on a single panel, to one other panel, let alone attempting to draw broad general conclusions. Additionally, the respondents did not constitute a random sample of all young offenders in this particular district. This further reduces the reliability and generalisability of the results of the present research. However, evidence heard by the Social Issues Committee does indicate that a considerable number of police officers are reluctant to caution, despite the fact that such a procedure is far less expensive than and probably equally as effective as charging.[69] Claims have been made that CAPs "cost nothing".[70] However, if police are undercautioning because of the existence of a CAP in their district, CAPs are more expensive and no more effective than utilising proper cautioning procedures.[71] This latter claim rests on the assumption that in order to ensure that a young person appears before a CAP, an arrest must be effected. An arrest carries with it the concomitant requirements of fingerprinting and processing. The cost of fingerprinting alone is of the order of $60. If the fingerprints have to be subsequently deleted, this procedure costs about $100.[72]

Further and more carefully constructed research critically utilising official data together with results drawn from a number of different panels spread evenly over New South Wales, based on truly representative random samples, needs to be undertaken to ascertain the relationship between CAPs and the practice of cautioning.

B INFLUENCE OF MAGISTRATES AND SOLICITORS ON VOLUNTARINESS OF CAP APPEARANCES

While a majority of responses to the question about whether the young person thought they had to go before the panel indicate that most thought they were doing so voluntarily (Table 3.1), the results for the question about the major influence on this decision (Table 2) indicate otherwise. Again, further and more carefully constructed research needs to be conducted to test the hypothesis that the young person does not volunteer to appear but is heavily influenced by magistrates, lawyers and parents to choose an option which

67 For some British research on these issues, see Bottomley, K and Pease, K, *Crime and Punishment: Interpreting the Data* (1980) at 33–50.

68 Above n37.

69 Social Issues Committee, above n1 at 70.

70 See Dixon, P, "Community Aid Panel", paper presented to the Australian Institute of Criminology Conference, *Preventing Juvenile Crime*, Melbourne, July 1989.

71 The Social Issues Committee favoured improving police cautioning. They recommended that police should be "given specific training on cautioning and its potential benefits", including education on the "merits, underlying philosophy and measurable effectiveness" of this option (above n1 at 71).

72 Information provided to JJAC Police Working Party. The costs of two court appearances should also be considered.

is presented as more lenient than court, but designed to ensure that the young person makes some payment to the "community", whether or not this is commensurate with the alleged offence. Certainly this may give police more satisfaction, but does it match with a young person's sense of fairness or the need to respond within a young person's time frame.[73]

C COMMUNITY WORK

The FACS' evaluation of the Wyong CAP made the following comments under the heading "Community Involvement":

> Perhaps the greatest benefit of the program is the resource that it generates into the community. Apart from the benefits it offers to the offender, the community is supplied with a voluntary labour source at no cost. Unlike offenders subject to a community service order, the panel offenders are only minor offenders and can work with a minimum of supervision. ...
>
> This particular function of the panel is very important and successful and is not duplicated in the court system at any level.[74]

One may well ask whether this "function" *should* be duplicated in the court system! Irrespective of whether the young person considers the number of hours to be "fair", enjoys the work suggested, goes on to continue as a volunteer at the site at which the work is performed, or whether the CAP attendees constitute a "valuable resource" for the community, the results of my research indicate that, at least initially, the respondents in this sample (with one or two notable exceptions) did not consider that they had any option but to do the work. Their major motivation seems to have been the carrot of a lighter penalty. The results set out in Table 6.1 indicate that, for this panel, magistrates do provide the carrot, although it is not crystal clear whether this is because the work was performed or because the young person underwent the CAP experience. Clearly, there are benefits which can be gained by young people through contact with many of the community organisations to which they are sent by a CAP. However, parents could equally be encouraged to introduce their children to community work without the need for juvenile justice intervention.[75] Cautioning panels such as that at Wagga Wagga[76] might also be able to come to a freely negotiated agreement that the young offender involve themselves in such work. Other community specific initiatives which are potentially capable of achieving similar results to those claimed by CAP organisers, but with tighter controls on the more coercive aspects of operation, and no requirement for multiple court appearances also need to be considered.

A glance at the responses to the question on whether respondents "enjoyed" the work indicates some variable responses to this question. Those who were asked to do street cleaning or kitchen work in retirement villages usually said they did not enjoy the work. Those who worked with the Bush Fire Brigade or State Emergency Services claimed to have

73 See, for example, *UN Convention on the Rights of the Child*, Article 40.2 (b)(iii): children have a right to have a matter determined without delay.

74 Above n41 at 9, 10.

75 See Carney, T, "Young Offenders and State Intervention: Issues of Control and Support for Parents and Young People" (1989) 22 *ANZ Journal of Criminology* 20.

76 Above n12.

enjoyed the work, mainly because of the people who worked in these services ("good blokes!") although some of them felt that there was little for them to do. Possibly the "benefits" to the "community" are greater than those accruing to the young person! [77]

The number of hours work being suggested by this panel is clearly excessive. The young person who was asked to do 80 hours had to clean the streets and definitely considered this to be a harsh punishment. He said he thought the whole thing was a waste of time! On return to court he was ordered to pay a fine — surely a double penalty, and one outside the range which could be legally imposed by the court. What is the nature of the lesson that this young person learned from his CAP experience?

A comment by one parent raises the further issue of the awareness by members of a CAP of the practical exigencies of completing the considerable number of hours suggested by them: "My son enjoyed the work but the Panel didn't realise that you can't do a lot of hours at the SES. Only three hours at a time — that means a lot of Monday nights".

Many of the responses suggest that the young people in this sample considered the work they had to do at the suggestion of the panel to be punishment alone, rather than a form of restitution or reparation. The following is a typical general response to the whole experience: "[It was] punishment. It's not really helping. The talk was OK but I thought they'd be nicer. The policeman didn't like me — he told me to sit up straight. They asked heaps of personal questions that had nothing to do with it. They made me wait for hours — from 6.30 till 11.30 and then I didn't get out until 12.15. It was difficult to fit in the hours".

Again, further research should be conducted to test the assertion that the number of hours of community work is excessive and felt to be harsh/unfair by young people. If this is true, young people's inherent sense of justice is not being recognised or adhered to.

The important question of the relationship between the work done at the suggestion of a CAP and Community Service ordered by the Children's Court as an alternative to custody is not discussed in this paper. This is clearly an issue which requires careful consideration. It may well be that the resources available to OJJ for utilisation as part of the court-ordered scheme of Community Service are diminished through utilisation by CAPs.

D EFFECT ON RECIDIVISM

Finally, research attempting to draw conclusions about the effects of particular programs on recidivism is inherently unreliable. So far in this paper I have not directly discussed the possible net-widening effect[78] of the CAPs. There is clear research evidence indicating that, for the majority of young people, the commission of minor offences is a normal part of growing up and that, if not drawn into the system, most youthful offenders simply grow out of crime.[79] My point here is that, unless CAPs are targeting an appropriate

77 See White, R, "Skill Training and Youth Formation" (1988) 7 (4) & (1989) 8 (1) *Youth Studies* 1.

78 Although Binder and Geis suggest that much concern with net-widening effects of juvenile justice interventions is misplaced. See "Ad Populum Argumentum in Criminology: Juvenile Diversion as Rhetoric", (1984) 30 *Crime and Delinquency* 309. See also Wundersitz, J, "The Net-widening Effect of Aid Panels and Screening Panels in the South Australian Juvenile Justice System" (1992) 25 *ANZ Journal of Criminology* 115.

79 See Rutherford, A, *Growing Out of Crime: Society and Young People in Trouble* (1986).

group of young offenders, rather than first and minor offenders who would benefit more from the timely response of an appropriately administered caution, claims to have reduced recidivism rates, together with those concerning the benefits generated to the community, may be no more than mere unsubstantiated justifications for the continued existence of the CAPs. Most research on recidivism compares the official crime rates over different time spans.[80] Rarely are the alleged offenders themselves asked whether they have re-offended and if not, why not. This may be because self-report studies are no longer fashionable, partly because of problems of reliability of responses to the questions inevitably asked in such studies. However, it is possible that modified research questions similar to those used in this study are probably as reliable an indicator of effects on recidivism as are the traditional methods for gleaning such information. Obviously, the hypothesis needs to be further tested and replicated at a variety of sites. The results from this small study indicate that, at least for this CAP, the experience had little effect on actual re-offending.

7 CONCLUSION

Community Aid Panels across New South Wales have been established by individual police officers encouraged and supported by a CAP unit located in Police Operational Headquarters.[81] Their existence and operation constitutes part of the continuing uneven development of disparate police practices towards young people discussed above. Supporters of their continued operation apparently believe that custodial regimes are less successful than community approaches in instilling responsibility for offending in young people. Their claims that CAPs are more successful in reducing recidivism than any other response to youth offending to date illustrate a firm belief in the restorative power of "community" intervention. White claims that "an expansion of 'soft cop' roles in the community, and a widening of the sites of intervention, accompanied by an extension of police powers, constitutes little more at a structural level than an effort to make repression appear more humane, and to disguise the burgeoning scope of state regulation".[82]

The results of the present research indicate that the value of this particular "soft cop" approach needs to be further interrogated. A humane approach to intervention, whatever its nature, surely must be part of any reform agenda. The difficulty arises when intervention is found to be repressive, especially in instances where a new approach is claimed to be liberating. Where new, and in the case of CAPs, de facto forms of regulation are touted as providing a "better" way, for instance, of preventing recidivism, then those who make such claims should be held accountable. Proof needs to be based on more than "gut feeling".

If CAPs are to remain, their position in juvenile justice strategies needs to be clearly enunciated. It may be that CAPs could become an integral part of a multiplicity of

80 See, for example, Bottomley and Pease, above n67. See also Woolredge, J D, "Age at first court intervention and the likelihood of recidivism among less serious juvenile offenders" (1991) 19 *Journal of Criminal Justice* 515.

81 This unit consists of two officers one of whom is appointed as head of the CAP division. Their function is to provide guidelines and advice on the procedure for establishing a CAP. They also collect some data on CAP operations.

82 White, R, "Taking custody to the Community: The Dynamics of Social Control and Social Integration" (1991) 3 *Current Issues in Criminal Justice* 171 at 184.

diversionary mechanisms allowing responses to be tailored to particular needs. The range of mechanisms established could include the following:

- improving police understanding and use of cautioning;
- implementating pre-court panels, such as those recommended by the Social Issues Committee, possibly similar to the South Australian Screening Panels;
- allowing CAPs to remain as one of the sentencing options available to the court.

Whichever choice is ultimately made, it is clear that accountability mechanisms, including appropriate legislative bases, must be carefully formulated and properly implemented, not just for the CAPs, but for all of the possible options suggested here.

SURVEY QUESTIONS

1 Had you received a caution from the police before this offence?
2 Why did you go before the CAP?
3 Did you feel obliged to go before the panel?
4 Do you think the hours the CAP suggested matched the offence you committed or do you think they were too hard on you?
5 Did you enjoy your Community Aid Work?
6 Did you think it was a punishment or did it help you?
7 Did you feel obliged to do the work that the Panel suggested to you?
8 What did your friends and family members think of you going before the panel?
9 What benefits did you get from the CAP?
10 Was the community aid work and going before the panel a deterrent to you reoffending?
11 Have you committed an offence since?
12 Do you feel any differently about the Police after the CAP experience?
13 Did you feel any differently about the Community after the CAP experience?
14 When you went back to court, did the magistrate take what you did into account when sentencing you?
15 Are there any other comments you would like to make about the Panel?