

# US judge questions 'three strikes' policy

By Claire Trevett

A former police officer and judge in the Superior Court of California, Judge Eugene Hyman said New Zealand's model - which applies only to the most serious violent offences - is not as hard-line as California's and judges have some discretion to ignore the policy if it would be unjust.

However, he questioned the deterrent effect of such hard-line policies saying in his experience offenders did not think through the punishment they might face before committing a crime.

The Act Party used the California experience in modelling the New Zealand version of three strikes, but the final policy agreed to by the government restricted it to only serious violent and sexual offences after criticism that the policy in California meant people convicted of relatively minor offences were being jailed for hefty terms.

Judge Hyman said there was disagreement in California on whether 'three strikes' had reduced the crime rate and it was debatable whether any changes in crime rates or re-offending rates were due to 'three strikes' or could be attributed to other factors.

"For example when people get older they commit less crime. The people committing the crime are in a certain age group. Once you get beyond 40 or so, crime goes down. So is it a factor of three strikes, or people ageing out of crime? Who knows. There are no simple solutions."

There were cases where long sentences were called for.

"Some people, because of their violent histories and recidivist behaviour, need unfortunately to be locked up for long periods of time. People that are stabbing people, shooting people, molesting people - those are violent scary people."

However in his experience offenders were not necessarily deterred by increased penalties because they rarely considered it before committing a crime.

"People commit crimes for various reasons, some of it has to do with being under the influence of alcohol and/or drugs, some of it has to do with the availability of weapons and they're upset. Or they may think they're going to commit a crime like robbery and then the victim isn't as willing as they think and then things



US Judge Eugene Hyman says 'three strikes' policies can have a limited deterrent effect. File photo / Hawke's Bay Today

become more aggravating and someone gets hurt.

"I don't think the death penalty is a deterrent. I think that to argue that having certain kinds of laws or certain kinds of penalties will automatically cause people to comply doesn't work, based on my experience."

He said a blunt analysis could show crime was reduced by such schemes because locking up criminals meant they were not on the streets. "But at what costs? My concern always is that sometimes it's looked at as a simple solution and we no longer have to make the effort to rehabilitate - we just lock people up."

Judge Hyman is in New Zealand to discuss domestic violence issues and yesterday took a side-trip to Nelson to also talk to Labour Party Mps at their caucus retreat.

He had passed down sentences which were required under the scheme which he considered to be overly harsh. While judges in New Zealand can avoid the three strikes sentences if they consider them manifestly unjust, the California scheme allows judges to ignore a 'strike' only if it would be 'in the interests of justice' - not because they considered the sentence too harsh.