

Auckland District Court  
9 October 2005

Dear Russell

I owe you a fuller report on my time in the USA recently, for which I had been kindly given eight days' judicial leave by your predecessor. Taken together with two weekends, I was away 12 days. Three of these were spent travelling, one visiting the Yosemite National Park in California, and the rest on restorative justice business. Of the eight working days, I was speaking on five. All expenses were met by the Americans.

### **Fresno, California**

Daniel Van Ness (author of *Restoring Justice*) and I were key note speakers on both days of the 11<sup>th</sup> Annual Restorative Justice Conference, organised by Fresno Pacific University's Center for Peacemaking and Conflict Studies. Dr Ron Claassen is the Director of that Center and had organised my visit there in 1986. This conference was part of a big push to get a restorative system legislated along New Zealand lines for Fresno County (one of the most progressive in California). The conference therefore involved the Sheriff, local Judges (including the Presiding [or Managing] Judge of the Superior Courts), business leaders, church and community leaders, law and criminology professors, a school principal, elected officials and various others. Dan Van Ness is working on a model for a fully restorative city, and his concepts include Justice Houses, which are very like the Community Justice Centres I have been advocating here since 1998. We had much common ground, but one or two differences.

Fresno has had victim-offender reconciliation programs operating since the 1980s, but they are almost entirely confined to youth offenders and are reliant on referrals from the courts and probation – like our adult system, in effect.

Those present were very keen to hear about the New Zealand experience, and my presentation was on the two legislative models we have, their common ground and their essential differences. New Zealand is still the only country with a youth justice system applying to all youth without gatekeepers. Both the adult and youth systems have had good results and people were very keen to see how these are achieved. They were especially interested to learn that restorative justice has worked best with serious cases and repeat offenders, as there is often a political tendency to assign restorative justice to minor offences or first offenders, which they are (rightly) trying to resist.

My third working day in Fresno included a separate meeting with the Fresno judiciary and officials from their (civil) ADR section of the courts. Most of these Judges had not been at the conference. I am told it was very helpful to them. I was very impressed with the variety of initiatives they are taking to promote

restorative justice without legislation (what they called “plan B”) and am awaiting written details of those.

### **Berkeley University**

This visit was a late addition to my itinerary. It was arranged while I was at Fresno by a consultant to the Administrative Office of the Courts of California, which has a strong programme on restorative justice, and sponsors a California Community Justice Project. At Berkeley I spent an hour with Professor Mary Louise Frampton, who teaches a restorative justice course that was introduced at the law students’ request. She was amazed that we have no such course in New Zealand. I also did a two-hour seminar for students of the School of Social Welfare. I had not been to Berkeley before. It has the most beautiful setting in park-like grounds in the hills overlooking San Francisco Harbour.

### **Minneapolis, Minnesota**

Here I attended the four day conference *Conflict Resolution in a Changing World; Building the Practice and Fostering Hope*. This was organised by the Association for Conflict Resolution, a major grouping of mediation practitioners and others from all sorts of fields, from family law, work place disputes, truancy, etc. They have a section on restorative justice which had organised my visit.

My presentation was in a session on international initiatives, and my co-presenter was Retired Judge Barry Stuart from the Yukon, whom I have known for 10 years. Debbie Watters from Northern Ireland, the third presenter, had to cancel at the last minute owing to the recent violence in her country. The session was well supported and received. Other sessions that I attended were:

- Key note address by Frances Moore Lappe, author of the new book *Democracy’s Edge*. Her message essentially is that America has to move from “thin democracy” (ie little more than democratic institutions such as elections – “something done to us or for us, but not by us or with us”) to “living democracy” in which at all levels people participate and take responsibility for what is happening in their communities, states and country. I realised that New Zealand has a “thicker” form of democracy than the US, but it still needs to engage us more at a grass roots level. (Restorative justice of course is a form of participatory democracy which supports her thesis.)
- *Justice in Colombia: Challenges for a Society in Conflict*. I was particularly interested in what is occurring with Justice Houses in this country, being aware of the work done there by New Zealander Annette Pearson. (This session was presented by a Colombian woman now working in USA).

- *Three Cultures on a Small Island: Dispute Resolution in Cyprus.* The three cultures are Greek, Turkish and British. The presenter, Ed Costello, is an amazing fellow, who we might see out here some day.
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- *Community mediation and restorative justice.* Here I was especially interested to see what Americans meant by community mediation and found that it can be little different from restorative justice but encompasses a much wider field of endeavour, and is often aligned to civil rights, and the improvement of the lot of the poor, as it is basically delivering justice at a community level.
- *Alternatives to litigation for religious sexual misconduct.* One of the presenters here is head of the very influential VOMA group (victim offender mediation organisation) and the others were running a programme of this type in New York, independent of but in consultation with the Catholic Church. I will pass these materials on to the churches here.

Overall, it was very valuable to see restorative justice involved as part of the much wider mediation movement, as I believe the two can strengthen each other significantly. It is also clear that there are a huge number of such initiatives implemented all round the USA, but so far no State has legislation such as ours, for which we are regarded as an international leader.

However, it is also clear that we are losing the initiative in the next step, which is taking much of this work (both civil and criminal) out of the courts and moving it in to community-based centres, so that the courts become the backstop and the venue for the harder and more intractable conflicts. I would be very interested to obtain your views on the subject when the opportunity next presents itself.

Kind personal regards.

Yours sincerely

**Judge FWM McElrea**