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6-7 PM

(CHL A)

PRESENTER (MARY WILSON): Back now to the issue of our overcrowded prisons. The government is looking at slashing the inmate count by a third by giving low-level offenders community-based sentences as part of an ongoing debate about reducing the number of prisoners, providing more rehabilitation and cutting reoffending. One Auckland District Court judge is praising the results of restorative justice conferences, an experiment that's been running since 2001 where victims confront offenders, talk about the damage the crime has caused and help decide on a punishment. Ministry of Justice research shows reoffending dropped by an average of only four percent, little different from criminals who didn't face up to their victims, but Judge Fred McElrae says the programme is a success.

JUDGE FRED MCELRAE (AUCKLAND DISTRICT COURT JUDGE): The primary purpose of restorative justice is not to do with reoffending rates but it is to do with a much better system of justice as far as the victims are concerned, and the research in New Zealand and elsewhere has showed very high levels of victim satisfaction with this process, much higher than with the traditional court system.

PRESENTER: Because they get an opportunity to face the offender and have a say in what they think the sentence should be?

MCELRAE: Yes, and other needs of theirs are met such as the ability to ask questions and have them answered. I mean...

PRESENTER: Why did you hit me or why did you burgle my house?

MCELRAE: Yeah, was this a random thing? Had you been targeting me? Were you going to come back? Am I safe? Are my children safe? All those sorts of things are very important for victims to be able to ask and they can do it face to face. So the main justification of restorative justice is not to do with reoffending but I think... I have the opposite view of this report. I think in fact it's a very positive report in that it shows that you can go about justice in this rather different way without causing an increase in crime and indeed causing a reduction in crime. Now, although several of these figures are said to be not statistically significant, I find that hard to understand, perhaps because I'm not a statistician, but let me just give you a couple of examples. The report talks about a 4 percent reduction in the reoffending rate for those who went to restorative conferences compared to the comparison group. The real figure is nine percent because the reconviction rate of one group was 45 percent and of the restorative group was 41 percent. Now, you might say the difference is 4 but

as a proportion that 4 is one eleventh of 45 and one eleventh of 100 is nine percent. So you've got a nine percent difference if you compare the reoffending rate of those who go to conference and those who don't. Likewise the difference in the imprisonment rate for those who went to conferences and those who didn't was 17 percent on the same comparison. And very significantly, not only did those who went to restorative conferences reoffend less, they did so at a later stage when they did reoffend, and the seriousness of their reoffending was only half that of the comparison group. Now, I think all that shows that you can operate a much better system, particularly for victims but also for everyone else involved, and at the same time make the community safer.

PRESENTER: Did you think there was perhaps an attitude that restorative justice programmes might indeed see a greater rate of reoffending, that it was a soft option or something?

MCELRAE: Well, I think people who are inclined to think it's a soft option would expect there to be a greater rate of reoffending but I think this shows it is not a soft option and bears out what has been said overseas and here for a long time, that actually facing up to your victim and other community members face to face and being accountable personally and not just through a lawyer standing in court where you don't have to say anything, is in fact a very difficult process and it's not just what happens at the conference, it's the changes that are expected of you after the conference.

PRESENTER: For instance?

MCELRAE: Well, changes in your lifestyle. I mean normally victims want to see something positive come out of it, so they want to know that this is not going to happen to somebody else and they will usually say well, what are you going to do about these things that have come up like your drug use or your lack of education or whatever, and it's those sort of topics of how do you actually prevent this happening again in which victims often have very positive and creative ideas themselves to offer, it's those sort of topics which can help provide something positive for the whole system.

PRESENTER: In that case you might expect a higher figure than if we even take yours of nine percent for reconviction rates, if it's such a glorious, positive experience and life changing?

MCELRAE: Well, you might but it just shows that there's a whole lot of other things going on. I mean restorative justice has never said it's going to solve crime and it doesn't pretend to.

PRESENTER: No, but the executive summary of this particular study does say that one of the main objectives of the restorative justice pilot was to reduce the rate of reoffending by offenders?

MCELRAE: One of them was but it wasn't ranked as the principle one and in my view it wasn't the principle one. And significantly there's been no two year follow-up on victims' attitudes but if you go back and look at the report done a year ago after the one year follow-up, the attitude of victims to the whole process was extremely positive and that's why the Victim Support movement for New Zealand supports this process.

PRESENTER: It would be interesting to know then what they make of the reconviction rate figures here, whether they may have expected something higher, and if they did, how that would affect the way they saw the process in hindsight?

MCELRAE: Well, I don't know. I think the main thing that Victim Support would be interested in is whether victims' needs are being met by the process and the earlier report showed that they were in a very substantial degree, although I must stress that... and I should have perhaps done this at the outset, that what I say here is said on my own behalf and not as a representative of the judiciary or even of the Ministry of Justice although I fully support what the Ministry has been doing in this area.

PRESENTER: What accounts have you read then from offenders after a restorative justice conference that have told you that it's had a compelling impact on them?

MCELRAE: Occasionally you see that reflected in sentencing reports but I think the only real test is in the way in which they live their lives. And can I suggest that to get a reduction of it appears 50 percent in the seriousness of reoffending is very significant. If you've got... you have to remember that this is reporting on the pilot... the court-referred pilot scheme which was set up to operate in four district courts. That scheme applies to moderately serious offending, it is not just for beginners in the courts, it's not for first offenders or whatever. It's dealing with moderately serious offending and some of these people are quite... have got quite substantial records. Now, for somebody who's for example been repeatedly committing burglaries, to come back before the court on a minor theft matter some time later and not to have continued with the burglaries is itself a positive factor for society.

PRESENTER: That's Auckland District Court Judge Fred McElrae.

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