

**Contemporary Issues in Education Law: Strategies for Best Practice**  
**Sydney, Australia, 7-9 July 1997**

***“Win-Win” Solutions to School Conflict***

a keynote address by  
**Judge FWM (Fred) McElrea<sup>i</sup>**  
Auckland District Court  
Private Bag 92-020, Auckland, NZ

**Crime and education**

It is a privilege to be invited to address this conference, especially as I do not claim any expertise in education law. My interest is essentially a practical one, as someone who sees large numbers of young people in the courts who are not succeeding in the education system and frequently have not been part of it for months or years although they are of school age. They are prime candidates for contact with the police and the courts. About 70% of the school-age referrals to the offices of Youth Justice, South Auckland, are not attending school.<sup>ii</sup> New Zealand’s Principal Youth Court Judge David Carruthers estimates that 80% of young offenders in our Youth Courts are not at school.<sup>iii</sup> Some are truants, some have been expelled or indefinitely suspended, some have simply slipped through the net by leaving one school and not enrolling at another.

An American writer recently summed up the connection between education and crime this way<sup>iv</sup>:

Truancy may be the beginning of a lifetime of problems for students who routinely skip school. Because these students fall behind in their school work, many drop out of school. Dropping out is easier than catching up.

Truancy is a stepping stone to delinquency and criminal activity. A report compiled by the Los Angeles County Office of Education on factors contributing to juvenile delinquency concluded that chronic absenteeism is the most powerful predictor of delinquent behaviour.

Truant students are at a higher risk of being drawn into behaviour involving drugs, alcohol or violence. A California deputy assistant attorney who handles truancy cases says he has “never seen a gang member who wasn’t a truant first.”

**Truancy and suspensions/expulsions in New Zealand**

In New Zealand the “Tomorrow’s Schools” reforms of 1989 did away with the truancy officers of the old Dept of Education and passed this responsibility to schools. Schools had some central funding allocated for this purpose but no legal obligation to employ truancy officers, and most were short of funds over-all. The result was an understandable lack of interest in pursuing truants. Only in the last year or two has the public become aware of the evidence, mostly anecdotal, of large numbers of young people not attending school. Surprisingly, there was (at least in January of this year) no national electronic register tracking all students from their initial enrolment until the end of their schooling, and so even

the Ministry of Education cannot tell us how many children should be at school but are not. The Ministry could only say that it held record cards for 2832 pupils unclaimed by any school, of whom 2316 were last recorded in the Auckland region.<sup>v</sup> However the Ministry has established a Non-Enrolment Truancy Service (“NETS”) to try and track down those who may have become lost from the education system.

Quite apart from truancy there those who are suspended or expelled from one school and who do not later attend another school. This occurs to many students despite the obligation imposed by the Education Act on the school to try and find another school for the student, and the right of the Ministry to require a state school to accept such a student. (In fact the Ministry is reluctant to force a school to accept a student and apparently does not often do so. It is a good example of how rights which exist in theory can prove illusory in practice.) In New Zealand in 1996 there were 10,016 suspensions (students aged under 16 years), of which 3471 were for an unspecified or indefinite period. In addition there were 119 expulsions (by definition, only students aged 16 or over), and an unknown number of unofficial and quite illegal “kiwi suspensions”, where the parents are simply invited to take their child away from school, the incentive being to avoid the “black mark” of an official suspension. I do not know of any published figure for the proportion of the 3,471 students indefinitely suspended who were subsequently reinstated at their own school, but one suspects it is a small percentage.

### **Long term costs**

The consequences for society of allowing young people to escape the education net are obviously highly damaging. A western economy seems able to use only so many unskilled workers, so every extra person without work skills probably represents an extra unemployment benefit - payable for life. If they have children there are added welfare benefits to be paid. If they get into crime there are massive costs in law enforcement, courts, social welfare homes, prisons, property damage, hospitalisation of victims, and so on. And there is the cost of losing the productivity of that person in the work force. On top of all these financial costs there the heavy personal and social costs for offenders, victims, their families, police, and communities. I am sure if Treasury officials undertook a long-term, detailed cost-benefit analysis they would produce a balance sheet that overwhelmingly demonstrated the necessity to keep young people at school and educate them properly.

### **A conflict of interests?**

It is submitted that a structural problem is apparent. As one school principal wrote to me:<sup>vi</sup>

It is true that truancy is a major problem, and often precedes further problems. My view of truancy is that schools will continue to make it a low priority while no incentives exist to fix it. In fact the “rewards” for addressing truancy are negligible, and often adverse, in ensuring problem students (usually with learning and attitude difficulties) are present daily. It is easier if they’re not, clearly, so staff concentrate on those who are present.

The solution proposed by this correspondent was to relate state funding to monthly attendance returns (instead of to rolls monitored on 1 March and 1 July only, as at present) thereby making high attendance a major benchmark of successful schools. (However, this

might discriminate against schools in areas where there is low parental support for education.)

It must indeed be tempting for embattled teachers and school administrators to see the departure of a difficult student as one problem less for the school to deal with, and heave a sigh of relief. The student may be the loser, but the school is seen as the winner. Many teachers would say they are there to teach the majority of students who want to learn, not to be social workers for the few who are trouble makers - and there is much truth in that. There are therefore real incentives for schools to let difficult students go, or to actively get rid of them, with no countervailing incentives to retain them. Further, the legal obligation on New Zealand parents to ensure their children are at school is rarely if ever enforced by bringing prosecutions against parents - because of the legal costs involved, I am told.

In part the problem arises because of an adversarial or “win-lose” approach to problem solving. In part it arises (and continues) because of the modern separation and delineation of roles and responsibilities, and the accompanying tendency to leave problems to others to solve, thus breaking down our sense of community. I wish to pursue these themes further in the context of both truancy and suspensions/expulsions.

**The community as part of the answer -**  
**(i) Waiheke Island**

Where there is a strong sense of community one can expect a different approach. It is no coincidence that publicity was given last week to Waiheke Island, near Auckland, where the island’s two schools have combined with some extra government funding to employ a truancy officer. Waiheke has a resident population of about 7,000 - small enough for the whole community to feel the effects of crime in a personal way, and through the Boards of Trustees of the schools to take an initiative to do something about it. The truancy officer contacts the two schools each morning to find out who is absent without leave that day, and with the assistance of three part-time volunteers follows up each case, starting with a phone call and/or visit to the students’ homes. According to the newspaper report<sup>vii</sup>, juvenile offending has dropped significantly as a result, with only one young burglar being apprehended since the scheme was established on 31 January, and the number of reported burglaries 20% down on the same period last year. (Adults, I presume, will account for most of the remaining 80%.) The police also report fewer motor vehicles taken or interfered with. In the first school term this year 501 cases of absenteeism were investigated, some of these being repeat cases. Sometimes the follow-up revealed family problems such as poverty which were referred to social agencies. The truancy officer tells me that the volunteers are beneficiaries who are proud to see this work as one way of giving back to the community what they have received.

This has to be a brilliant scheme. Admittedly Waiheke has the advantage of natural boundaries and a contained community, but the real success of its venture, I suspect, lies in the schools being seen as part of the community and therefore jointly responsible with the community for finding solutions to shared problems. There seems to be no reason why other schools should not follow suit and appoint a shared truancy officer (possibly part-time) supported by community volunteers. The volunteers’ involvement will be of great value to the scheme, because they tangibly represent the community’s interest in peace keeping (specifically, in reducing crime levels). They will also have some knowledge of the

community's population and its resources, both official and unofficial, for solving problems that are uncovered. If the volunteers are connected with the school so much the better but this is not the case at Waiheke.

**(ii) Tu Tangata programme**

Equally exciting (but not specifically directed at truancy) is the Tu Tangata programme operating at Parkway College, Wainuiomata, near Wellington. This method of getting poor achievers to learn is the sort of positive step that encourages students not to truant. In the first 15 months of the programme truancy amongst third formers dropped from 30% to 6%. A newspaper account of this essentially Maori initiative explains:<sup>viii</sup>

Its secret is hands-on community involvement in the daily schooling of adolescents. Aunties, fathers, grandmothers and other adults from the local community go to school with the pupils, do the lessons with them, and the homework. They move quietly around classrooms, getting beside the potential troublemakers as well as the quiet ones who can't keep up and daydream. They help calm the mayhem. These helpers are not teachers. They're called education support officers (ESOs). ESO Jackie Awa says a bonus for many of them is the second chance at education for themselves.

The ESOs are Maori, European, Samoan and Indian. Two of them join every third form class every school day, all day. They receive some payment from lottery grants or are beneficiaries already receiving a state income. Previously sceptical teachers now find they have time to teach, instead of just dealing with behaviour problems. But equally important is the message it gives to the students. The newspaper quotes Professor Alton-Lee from Victoria University of Wellington:<sup>ix</sup>

Bringing the support workers into the classroom was the point at which the programme became revolutionary ... It's the community saying to the children, "We believe learning is so important that we have adults who are prepared to sit alongside you and see that you get the best out of it."

**Restorative justice**

Leaving the topic of truancy for the moment and moving to the question of suspensions and expulsions, I want to return to a paper entitled "Student Discipline and Restorative Justice" which I gave at a Legal Research Foundation seminar held in Auckland last year.<sup>x</sup> The paper explored the parallels between school justice and criminal justice, and suggested that restorative justice might offer a better way in practice of dealing with serious disciplinary problems in schools before expelling or indefinitely suspending troublesome students. The particular model of restorative justice that I referred to was the family group conference concept used in the Youth Court in New Zealand, which I believe could be easily adapted to become a school community conference.

At that time I was unaware that, in Australia, guidance officer Margaret Thorsburn had already introduced school conferences at Maroochydore High School, Queensland.<sup>xi</sup> I refer to some valuable trial results from a more recent Queensland study below.

For those not familiar with restorative justice it is an approach to conflict resolution in the area of criminal offending, ancient in its origins but only recently resurfacing in western legal systems. Galaway and Hudson (1996) describe its essentials:<sup>xii</sup>

“Three elements are fundamental to any restorative justice definition and practice. First, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities, and the offenders themselves, and only secondarily as a violation against the state. Second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute. Third, the criminal justice process should facilitate active participation by victims, offenders and their communities in order to find solutions to the conflict.”

The best introduction to the topic is still, in my view, the seminal work of that Menonite prophet of justice, Howard Zehr, *Changing lenses: a new focus for crime and justice*.<sup>xiii</sup> It was certainly the book that opened my eyes to a new paradigm of justice. However the North American model of restorative justice reflected in that book - Victim Offender Reconciliation Programs - is essentially a one-to one mediation model that omits the essential element of the community found in Canadian sentencing circles and family group conferences in Australia and New Zealand. More recent American writing has moved to include the community element.<sup>xiv</sup>

It is important however to realise that restorative justice does not presuppose intact communities. It can itself be a community-building process, as Judge Barry Stuart has noted in the context of sentencing circles in Canada.<sup>xv</sup> I have previously advanced a similar view:  
xvi

... criminal justice has been divorced from the community for far too long. Justice has come to be seen as a contest between the State and the defendant. Largely ignored is the forgotten party, the victim, and the community to which they both belong. Justice should be something which we claim for ourselves and strive to enhance, but at present the ordinary person feels little sense of ownership of justice. It is seen as a legalistic system of rules governing this *State v Defendant* contest. As a result there is little incentive for anyone to take responsibility for the offending itself or for putting right the wrong. By contrast restorative justice is essentially a community-based model that encourages the acceptance of responsibility by all concerned and draws on the strengths of the community to restore peace ...

More recently I have argued (at a LEADR conference in Perth two months ago) that restorative justice in the criminal law is closely related to alternative dispute resolution (“ADR”) in civil law. My paper<sup>xvii</sup> listed seven points of close similarity, and by the end of that conference I was able to add three more.<sup>xviii</sup> I mention this to emphasise that what I said at the start, that restorative justice is an approach to conflict resolution in a particular area. There is no reason why its principles should not have application in other areas like education or civil disputes, or indeed in international disputes.

### **School justice and criminal justice**

My interest in restorative justice derives from my work as a Youth Court judge and the realisation that the Youth Court model in New Zealand is essentially a restorative model of justice. In the Legal Research Foundation paper already mentioned I suggested that there are many parallels between the traditional regime of punishment as administered through

adults' courts on the one hand, and discipline as administered in our schools, especially the use of suspensions and expulsions to maintain discipline, on the other hand. These I listed as follows:<sup>xix</sup>

1. Professional people (judges, lawyers and teachers) are in substantial control. In court most of the informed action is contained within a triangle marked out by the positions of judge, prosecution and defence counsel. In the case of schools the principal, Board of Trustees and the Ministry of Education perhaps comprise a similar triangle, although I accept that the Board includes community representatives.
2. Both the offender and the community of which s/he is part have very little say in the outcome. It is in large measure imposed by those in a position of power, rather than being a matter for negotiation. (Is it not extraordinary that the Board is not obliged to listen to the student? What does this say about the present model?)
3. Rule- and ritual-based systems minimise the opportunity for change through the experience of shame and remorse (as distinct from public humiliation).
4. "Rules rule". Punishment in the courts, and discipline in schools, are seen as fair if there are clear rules which have been followed in any given case. Justice is measured by procedures rather than outcomes.
5. No real attempt is made to assess any wider responsibility for the offending behaviour.
6. Little effort is made to ensure the offending will not be repeated by dealing with its causes.
7. There has been a marked concentration on the rights of individuals without a balancing consideration of the rights (and responsibilities) of communities.
8. Community resources that might produce a positive outcome are often ignored.

As a result of these combined deficiencies in the traditional court model there is often no meaningful assumption of responsibility by anyone for putting right the wrong. I suspect the same is true in education. Instead an attitude of "out of sight, out of mind" can flourish. By taking the culprit out of the neighbourhood or school community (by imprisonment, or expulsion/suspension) we think we have removed the problem. In fact it has usually been simply relocated in time and place - and, in the process, it is often exacerbated.

### **School community conferences**

The solution which I proposed was a modified form of a family group conference, called a school community conference.<sup>xx</sup> No long term suspension or expulsion would be possible without first holding a SCC. The conference would comprise pupil and staff representatives; the principal; another member of the Board of Trustees; the student and members of his/her family, including extended family; a Youth Advocate (ie a specialist lawyer with experience in the Youth Court) or member of Youth Law Project or local Neighbourhood Law Office; the local Youth Aid (police) officer, if the offending behaviour constituted criminal behaviour or the young person had a Youth Court record; and one or more representatives of the local community both within and outside of the school - perhaps

a drugs counsellor, kaumatua or cultural group leader, football coach or other persons who might have a relationship of respect and influence with the student. I now consider that the conference should include any student or teacher who had been a particular victim of the misconduct. As Howard Zehr makes clear, victims are key players in restorative justice.

Such a group would be required to consider any relevant matters raised by the student, the stated need for removal from the school, the conduct giving rise to it, the responsibility for that conduct, and what might be done to remedy the problem - and then to draw up a plan to address those concerns? A good plan would involve some items for the school's benefit (eg non-violence pacts, attendance undertakings), some items for the student's benefit (eg assistance with learning difficulties, alcohol counselling, trial placement with basketball team or other desired recreational group, undertakings by family to take more responsibility, or to cease harsh discipline eg beatings), some items for the family's benefit (eg support with after-school supervision, referral to church- or community-based counselling, or even inclusion in the school community), and some elements for the benefit of the community (eg removal of graffiti, non-association with troublesome elements, surrendering keys of a motor vehicle).

The position would then be reviewed after say two or three months by a reconvened SCC which would then make a report and recommendation (which could include expulsion) to the Board of Trustees - perhaps with a statutory presumption in favour of the recommendation which the Board could reject only with the agreement of the Ministry? (Or perhaps not.)

Further, a principal could convene such a conference (of his/her own initiative or at the request of others) even before reaching the point of possible suspension or expulsion, in order to deal with serious behavioural problems?

### **Related issues**

Coupled with this proposal was the suggestion that each school establish a Conflict Resolution Centre, where the SCC would meet but which would also be open for use by other members of the school community who wanted to resolve disputes. This would encourage positive, non-violent outcomes to conflicts. Restorative justice is a sub-set of peace-making as well as of community building, and both aspects would be put to work in such a centre.

Some Auckland schools are already implementing something like school community conferences, specifically Penrose High School and Tamaki College. Both of these schools receive special funding to employ a social worker, and obviously this would greatly assist in setting up and following through on such conferences, but the great value of using volunteer help should not be overlooked as a means of developing and cementing links with the community.

A co-principal of Penrose High School, Ann Dunphy, argues for an integrated approach by different agencies:<sup>xxi</sup>

Simply letting such young people drop out and roam is not socially responsible. Nor is it sensible to let fragmented, partial programmes dabble with a problem of such crucial national interest. Better support for the young and value for money would come with

integration of truancy, health and social services. There are models of this, both in New Zealand and overseas.

Such a one-stop shop approach can often be centred in schools, but this is not essential. The important thing is to build a sense of community support by integrating the work of all agencies that deal with human welfare - schools, health and social services and police.

I support what Ann Dunphy says, but suggest that the community should be more directly involved than through official agencies.

A related proposal has been made by a Wellington Youth Justice Co-ordinator Allan MacRae for a “combined approach” of education and youth justice personnel when there is youth offending on school grounds. A family group conference is held with the school represented at the conference as a “victim”.

### **Australian research results**

New Zealand has been abysmally slow in conducting research into family group conferences. I am grateful that in ACT Professor John Braithwaite and others have published preliminary results from their research which are highly favourable to restorative justice.<sup>xxii</sup> Their study was not specifically related to schools. However in June 1996 the Department of Education, Queensland, published a report on a year-long trial of conferencing in 75 Queensland schools, which makes very exciting reading.<sup>xxiii</sup> Margaret Thorsburn is one of the authors. Included in the findings of the report is evidence that:

- Participants had a high degree of satisfaction regarding the process and outcomes of conferencing.
- There were high rates of compliance by offenders with the terms of agreements.
- There was a low rate of recidivism on the part of offenders.
- A majority of victims felt safer and more able to manage similar situations than before conferencing.
- Offenders had high levels of understanding and empathy towards victims.
- Administrators felt that conferencing reinforced school values.
- Most family members expressed positive perceptions of the school and comfort in approaching the school on other matters.
- Nearly all schools in the trial had changed their thinking about behaviour management as a result of involvement in conferencing.

I hope these results will be widely publicised, as they hold out hope for a new way of dealing with behaviour problems in schools - a way that is inclusive rather than producing outcasts, a way that draws on the strengths of the school community and acknowledges mutual obligations. These are all features of restorative justice.

### **Alternative education**

There must however also be acknowledged the need for some sort of alternative education for those who have been out of school for a substantial period or who have proved unsuited to the predominantly academic model currently operating in New Zealand. For these students a different curriculum and teaching methods might be required. A most compelling case for such a facility in New Zealand has been advanced

by the Titiro Whanua Trust of South Auckland, which is seeking funding for a two year pilot programme. There is clearly no point getting drop-outs back to school if they cannot fit in to the model they left. This difficulty is exacerbated by the demise some years ago of technical colleges - secondary schools principally teaching work skills. Now we have a national curriculum which is basically academic in nature very little flexibility being evident.

### **Proposal for an Education Review Tribunal**

Earlier this year in New Zealand the office of the Commissioner for Children proposed the establishment of an Education Review Tribunal (“ERT”). This body would consider appeals from students and parents dissatisfied with a refusal to enrol a student, or to suspend or expel a student from school. The ERT would be chaired by a lawyer and have two other independent members with an educational background. Because the proposal is under consideration by the Minister of Education I do not propose to discuss its details, but the idea was foreshadowed in the Commissioner’s report for the year ended 30 June 1996 tabled in Parliament in February 1997 and has featured in the news media since. I wish to confine my comments to the implications of such an appeal system, looked at from a structural point of view and contrasting it with a community-based approach such as a school community conference (“SCC”). I acknowledge however that both may have their place.

1. Appeal systems typically produce winners and losers - the appeal is lost by either the appellant or the respondent. Even where a power to conciliate a dispute is included, the essential structure is adversarial. Students may feel that they have “scored” points against their school by being reinstated against the wishes of the school. In the end both sides would be the loser where further damage is done by the appeal process. Whoever wins, someone loses face. It is not a “win-win” solution.

2. An appeal system addresses the decision appealed from *after* the decision has been taken and the parties have already taken a stand. The object of a SCC would be to *prevent* wrong decisions being taken, by establishing a procedure to be followed before a decision to suspend/expel is made. (I do not include short suspensions in this process - a cooling off period of a few days may be very sensible in particular cases.) By getting the right decision at the start further damage from the suspension or expulsion can be avoided. Such damage cannot necessarily be remedied by overturning the original decision.

3. Appeal processes emphasise rights, whereas restorative justice processes emphasise obligations. Relevant here are the obligations of students to respect others and not to disrupt the learning of others, the obligations of schools to educate students, and the obligations of parents to support the school and take responsibility for their children. Students’ rights are important but you cannot make a working machine out of them. It is the same with other areas of conflict resolution. At the LEADR conference in Perth I attended two sessions given by the American guru of mediation, Robert A. Baruch Bush of Hofstra Law School, Hempstead, New York. One of those sessions was entitled “Mediation as a transformative process”.

The experience of conflict has been changed - from destructive to constructive. That is what we mean by transformative.<sup>xxiv</sup>

I do not recall Robert Bush using the word “rights” in the entire conference.

On the other hand rights are the common tools or weapons of adversarial processes. This is especially so where the rights concerned are the rights of individuals, which western society seems to have specialised in for the last 200 years or so. In themselves rights usually make sense but there is a serious imbalance when the law does not impose corresponding obligations, and where the rights and obligations of communities are not recognised. This we have been very poor at doing. Shortly stated, an emphasis on individuals' rights without an examination of their obligations has contributed to the self-centred, "me" society that surrounds us today. It is therefore refreshingly different to find that the New Zealand Youth Court model can rely on a statutory objective of ensuring that young offenders are "held accountable, and encouraged to accept responsibility, for their behaviour; and ... are dealt with in a way that acknowledges their needs and will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways".<sup>xxv</sup> This composite objective could well be applied directly in the school discipline process. Ultimately the problem is not so much a matter of students' "rights", but rather the protection of society itself. As I have previously expressed it,<sup>xxvi</sup>

[m]y concern is not that students need more rights, or more recognition of rights, but that the community is entitled to know that they are being educated and shaped as responsible members of society, and the community should be invited to be involved in that process.

Similarly, the authors of a recent article about alternative dispute resolution say of that process:<sup>xxvii</sup>

Our experience is that parties may be looking for a more profound outcome than simple vindication of their legal rights. They are looking for a satisfactory outcome which accommodates their sense of justice and fairness. Most [civil] disputes are complex with right and wrong on both sides. Mediation can enable the parties to find ways to mesh their mutual interests ...

4. Appeals where successful essentially restore the status quo without solving the problem that gave rise to the appeal situation. In other words they basically reinstate the old problem. The object of a SCC would be to address the underlying difficulties in a manner that disposes of them for the benefit of all concerned - student, teacher, and the school community - and in the process avoids the need to suspend (or end) the young person's education. The student can be held accountable for his/her misconduct, but the conference can also look at the issue from other points of view - eg is the student saying that he/she has not had a "fair go", are the parents doing their part to assist, and so on.

5. Rights-based systems are not good at involving relevant communities. This may be because people can easily look to others to enforce rights - especially state institutions - but those others may not have the means to do so. They also tend to be dominated by professionals, so that the power (and the responsibility) tends to remain with them. The genius of restorative justice measures is that ordinary people seem intuitively to understand and appreciate them. You do not need a tertiary education to be involved. They very much represent justice at the "grass roots" level, so that people feel comfortable about taking part. Much of New Zealand (and I suspect Australian) society has been shaped by the willing involvement of ordinary people as volunteers in all sorts of causes. It is one of our great Anzac strengths. What we need to do is to allow some of that ethos to get to work in our systems of justice for young people, both in our courts and in our schools.

It may well be that an appeal system is needed to correct residual errors, especially in view of the high cost of seeking judicial review through the courts, but it is surely far better to first put in place throughout our education systems a strategy for best practice that aims at “win-win” solutions and ensures errors are much less likely to be made in the first place.

---

<sup>i</sup> MA (1st class Hons in Philosophy) LLB (Otago), LLM (London), Dip Crim (Cantab), District Court Judge and Youth Court Judge, Auckland.

<sup>ii</sup> Figure given by Graeme Vincent, Youth Justice South Auckland Manager, quoted in *NZ Herald*, 3 September 1996.

<sup>iii</sup> Also quoted in *NZ Herald*, 3 September 1996.

<sup>iv</sup> Eileen M. Garry, “Truancy: First Step to a Lifetime of Problems”, in *Juvenile Justice Bulletin* (Office of Juvenile Justice and Delinquency Prevention, US Department of Justice), October 1996, p.1.

<sup>v</sup> *NZ Herald* 13 January 1997 p.A12 (editorial).

<sup>vi</sup> April 1997 - her identity will remain confidential.

<sup>vii</sup> *New Zealand Herald*, 4 July, 1997, p.A7.

<sup>viii</sup> *The Dominion*, 20 October 1996.

<sup>ix</sup> *ibid.*

<sup>x</sup> McElrea, FWM (1996), “Student Discipline and Restorative Justice”, in *School Discipline and Students’ Rights*, Auckland, NZ: Legal Research Foundation.

<sup>xi</sup> McDonald, J et al (1995) *Real Justice Training Manual* Pipersville, Pennsylvania: The Piper’s Press, p.15.

<sup>xii</sup> Galaway, B. and Hudson J. (Ed.) (1996) *Restorative Justice: International Perspectives*. Monsey, NY, USA: Criminal Justice Press, p.2.

<sup>xiii</sup> Zehr, H. (1990), *Changing lenses: a new focus for crime and justice* Scottdale, Pennsylvania: Herald Press.

<sup>xiv</sup> eg Umbreit, M. and Zehr, H. (1996) “Family Group Conferences: A Challenge to Victim Offender Mediation?” in *Bits ‘N Pieces II* 15(2):1-6

<sup>xv</sup> Stuart, B. (1996) “Circle Sentencing: Turning Swords into Ploughshares.” in Galaway and Hudson (Ed.) (above) pp.193-206.

<sup>xvi</sup> McElrea, FWM (1995), “Accountability in the Community: Taking Responsibility for Offending”, in *Rethinking Criminal Justice Vol I*, Auckland, NZ: Legal Research Foundation, p.61.

<sup>xvii</sup> FWM McElrea (1997), “Restorative justice - a peace making process”, proceedings of LEADR’s Fifth International Conference in Australasia on Alternative Dispute Resolution, Perth WA, 9-11 May 1997.

<sup>xviii</sup> The process is relational, not transactional; it is transformative; and it can take account of the contributions to the problem made by different parties.

<sup>xix</sup> McElrea, FWM (1996) (above), pp.89-90.

<sup>xx</sup> *ibid.*, pp.91-92.

<sup>xxi</sup> “Children learn what they live - unfortunately”, in *New Zealand Herald* 28 December 1996 p.A15.

<sup>xxii</sup> as reported in “Shame and Punishment”, *The Australian*, 22 April 1997, p.13.

<sup>xxiii</sup> Department of Education, Queensland (1996) *Community Accountability Conferencing - trial report*.

<sup>xxiv</sup> statement at workshop, 11 May 1997.

<sup>xxv</sup> Section 4(f) Children, Young Persons and Their Families Act, 1989.

<sup>xxvi</sup> McElrea, FWM (1996) (above), p.90.

<sup>xxvii</sup> Clapshaw, D and Hurley, D (1997) “More about justice and fairness than a vindication of legal rights” in *Law Talk* 479 (23 June 1997) p.14 at p.15.