Whiti Te Rā, Ohinemutu 16-17 July 2017
Judge Coral Shaw's Address to Delegates

Tama-te-Kapua

- ancestor of Te Arawa
- captain of the Te Arawa waka
- thief.

In Hawaiki Tama and his brother got into an argument with the High Priest, Uenuku. They believed he or his associates were responsible for the death of Tama's *kuri* (dog). So Tama and his brother got some stilts and stole breadfruit from Uenuku's breadfruit trees.

Battle ensued. Tama and his brother won the first round but decided to leave Hawaiki before there was retaliation. After some more adventures (other people's wives were involved) he made it to Aotearoa, to Maketu, and to this place. On the whare here at Ohinemutu is a carving of Tama and his stilts.

Tama-te-Kapua is a revered tipuna, a hero.

If Tama-te-Kapua had been born in this day and age, it would have become a different story. Uenuku would have called the cops. Tama and his brother would have been arrested, locked up, charged, put on trial and sentenced. Being Māori, with a history of bad behaviour, (fighting in a public place and absconding from the authorities) in all likelihood he would have ended up in prison. At the very best he would have served some time in remand prison waiting for his hearing until the charges were dealt with.

Once released, his once positive if somewhat rebellious spirit would have become negative. He is on a downwards spiral. He is most likely now addicted to alcohol, drugs, violence. He is not a hero, but a villain.

What is the difference between those two stories? In today's version, Tama has been subjected to the full glory of New Zealand's criminal justice system. If people are not true villains when they enter the system, it is more likely than not they will be when they leave.

As a District Court Judge in West Auckland, I saw Tamas day after day after day. Many were frequent flyers. Some of them were well used to Court. As children, they had sat at the back watching friends or relations in the dock. They started with the driving offences, no rego, no warrant, careless driving, no driver's license, or possession of cannabis. Then they were back for non-payment of the fines imposed for the minor offences: PD, Community Service. Then breach of the community service, a burg or two, fighting in public, male assaults female. Aggravated robbery, dealing – then finally full graduation--straight to goal.

It didn't take long for me, a middle class pakeha, to realise something was wrong with this inevitable pattern. It was obvious that whatever I said in court was going straight over the heads of those in the dock. It didn't help that my Māori was execrable. I later came to know one of these young men quite well. He described how in court I had called him Mr Renarrta. There was a sense of helpless resignation and disengagement from the whole process. I was appalled that so many seemed to have no address to which they could be bailed, so many appeared in court without family support.

One Friday afternoon in the early 90s as I was preparing to leave the court, the police advised they had a late arrest. I waited for him to be processed and then went to the courtroom. A thin, desperate but defiant 17-year-old boy stood there. Charged with something reasonably serious and in breach of his bail conditions. The police prosecutor demanded a remand in custody over the weekend while they found his full file. The duty solicitor was over it and helpless. My blood boiled.

I took an adjournment and sat alone in my chambers wondering what to do. It came to me that the answer must lie with the community to which this young man belonged. Judge Michael Brown had spoken to me about Hoani Waititi Marae and the legendary Dr Pita Sharples. He'd suggested I should try to meet him one day. This surely was the day.

I called the marae, said who I was and asked to speak with him. After a long wait he came on the line. He said, "Judges only ring me up when they want something. What do you want?" I said, "I want some help to keep a young Māori kid out of prison for the weekend". He said "Give me 20 minutes".

Within an hour a kaumātua had come to the courthouse, spoken to the boy, worked out which whānau he belonged to and had agreed to put him up for the weekend and to see that there was whānau support in court on Monday morning. The prosecutor caved in. After bailing the young man into the care of the rather stern looking kaumātua, I cried with relief.

So began my association with Hoani Waititi marae and Tā Pita. Together we worked to revive and adapt the old community panel system which had been operating in West Auckland since the mid 1970's. It began as a forum to deal with high school complaints about petty crime incidents amongst Māori pupils in the school community. As Tā Pita has observed, the model illustrates that the tikanga handed down generation after generation within Māori society has been retained to provide a user-friendly method of dispute resolution, which could apply to all societies. The model was so successful that the police began referring their complaints to the forum to resolve and then later on, the courts began referring young people appearing officially on charges to the forum. This model was used by Judge Michael J A Brown to design the family group conferencing procedures, which were established for our Children and Young Persons Courts, which continue to this day and have blossomed into the wonderful Rangatahi Youth Courts.

Until the early 1990s the model was only used for youth justice. Tā Pita and I developed it for the adult courts. It became Te Whānau Āwhina, a Restorative Justice programme.

The then Department of Justice was cautiously welcoming and allowed the Henderson District Court and the department to enter into a MOU which set out the protocol. In a nut shell, Hoani Waititi marae would have a recognised presence in the list court to whom the judge could refer likely candidates. Generally, these were young Māori who had pleaded guilty to a crime. They were given the choice: be sentenced to a standard sentence or have the case adjourned while they went through the Te Whānau Āwhina process, the kaumātua assessed suitability and, if all went well, the defendant would be remanded for a month or so. The bail conditions included attendance as required by Te Whānau Āwhina.

The process was then entirely tikanga based. It denounced the crime but sought to embrace the criminal as a human being capable of redemption. It confronted the offender with the reality of what he or she had done and wherever possible had the victim present. It found his whānau and made all efforts to help them re engage. If there was none around or capable, he would be embraced by the marae whānau, introduced to the rigors of Mau Rakau, and alternately scolded and cuddled by the nannies. They were made accountable to their victim, to themselves and to their community. They were encouraged into rehab programmes, work or education.

At the end of a couple of months the offender came back to court and the kaumātua would present a report to the sentencing judge. More often or not, the outcome would reflect the progress made and recognise that the defendant had not been on a picnic but a tough regime in which he or she had participated and engaged. I cannot recall a custodial sentence ever being imposed after the successful completion of the programme. I was thrilled when visiting the Marae to see some of these people still engaged long after their court appearances.

My regret is that the programme remained largely confined to West Auckland. The idea did not get enough traction or support to enable it to be transplanted to other places. If only our rural centres had such programmes.

What actually happened was the government decided to treat it like a standard as restorative justice programme. It became a question of numbers and facilitators and budget restraints. The messages? First there are alternatives to the cookie cutter court processes which can fulfil the needs of Māori offenders, the community and the requirements of the criminal justice legislation. This is just one example. But, it takes two or more to tango. It is not enough for a well-meaning individual to come up with an idea. That individual needs support from at least two different places – firstly from iwi, hapu, Marae, whānau, and secondly from the government. The government is responsible for regulating crime and its outcomes. When the outcome of criminal offending is more criminal offending, then something is wrong and it is duty bound to do something.

The wonderful thing that happened in the early 90s was that some enlightened people in the Department of Justice were persuaded that there was merit in the Te Whānau Āwhina approach. They decided to *kanikani* (dance) and it worked.

As we have heard over the last day here at Whiti Te Rā, there are lots of good ideas out there. There are lots of organisations, like Mahi Tahi Akoranga, who are devoted to coming up with tikanga-based, kaupapa-based, whānau -based solutions. But we cannot dance on our own. We need, and Māori offenders and their whānau need, government agencies that can see past the present failing rules and regulations and processes and have the courage and foresight to listen to those who know the reality.

I recall an event in the Henderson District Court many years ago when the reality hit me. I did not know then or now whether to laugh or cry. I was sentencing a young Māori man for a serious offence for which imprisonment was inevitable. The day was very busy and the courtroom was full. The lawyer gave his plea in mitigation. The young man looked completely lost. I asked the lawyer if he had any support in the court. Before he could answer there was a tremendous turmoil at the back of the public gallery, several people stood up and moved around and then an elderly kuia emerged from the group. She began to walk slowly from the back of the courtroom towards me.

She had her arms spread out wide. She was, I think, placing her confidence in me that I would do the right thing. She said "Your majesty. This is our boy. We know what he has done. It is up to you. You have your left hand and you have your right hand, my advice to you is - never let the left hand know what the right hand is doing."

It made no sense at all but I knew exactly what she meant. She wanted things to be made right. I have no confidence the prison sentence would have achieved that. Not because prison was not appropriate but because once he was in the custody of the Crown, that young man would not receive the proper protection to which he was entitled. Unless he was lucky enough to be one of the minority exposed to tikanga as taught by Mahi Tahi and others, or some other appropriate intervention, he was doomed to return.

We can and must do better.
Kia kaha ki a koutou, kia maia, kia manawanui.

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MAHI TAHI

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