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DEVELOPING & EVALUATING JUSTICE PROJECTS IN ABORIGINAL COMMUNITIES: A Review Of The Literature

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DEVELOPING & EVALUATING JUSTICE PROJECTS IN ABORIGINAL COMMUNITIES:

A REVIEW OF THE LITERATURE

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1998

Making It Work: Planning and Evaluating Community Corrections and Healing Projects in Aboriginal Communities and *Developing and Evaluating Justice/Community Corrections Projects: A Review of the Literature* *were originally planned as one volume. In looking at the authors' work, the Aboriginal Corrections Policy Unit decided that the two pieces were sufficiently different that their differences should be reflected in their publishing. The former is published as part of the Aboriginal Peoples Collection Technical Series, a group of publications meant to offer practical, on-the-ground advice to First Nations communities, both urban and reserve. The latter publication is part of the Aboriginal Peoples Collection, a series with a history of getting information on the general theme of Aboriginal corrections out to all who may be interested in it. It is the hope of the Aboriginal Corrections Policy Unit that both of these volumes will prove useful not only to their intended audiences but to all who take an interest in the issues concerning the First Peoples of North America.*

Aboriginal Corrections Policy Unit
Solicitor General Canada
March 1998

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INTRODUCTION

This working bibliography assembles written materials – books, monographs, reports, articles, and papers – that are of value for policy makers, practitioners, academics, and citizens who are concerned with justice issues and projects in Canada's Aboriginal communities. The field of justice is defined in the broad sense to include laws, justice practices and processes, policing, and corrections. The objective has been to provide readers, where possible, with a short description of each work, emphasizing its key themes and the issues dealt with. For readers' convenience, the review of literature is divided into two parts: Part A, Contextual and Academic Bibliography, and Part B, Evaluations, Manuals and Programs. Additional sections provide a short background or context for locating or placing Aboriginal justice initiatives and, from the author's perspective, a short compilation of chief "lessons learned" from the previous justice initiatives.

There has been a proliferation of Aboriginal justice initiatives in recent years, and all signs indicate that there is much more to come. The main push factor has been a wide-spread view, common among both Aboriginal people, and officials and key players in the justice system, that the conventional criminal justice system has not worked well for Aboriginal peoples. The main pull factor has been the congruence of Aboriginal wishes and governmental policy concerning the desirability of greater Aboriginal self-government and autonomy. There is widespread enthusiasm about the prospect of Aboriginal justice moving beyond the state or condition where the legacy has been over-representation (as regards victims, offenders, and inmates), minimal Aboriginal participation in the determination of justice, and general Aboriginal estrangement. A future state is envisaged where Aboriginal justice furthers other Aboriginal collective objectives, incorporates appropriate traditions and experiences, manifests Aboriginal control, and deals effectively with the harm that crime and social disorder have wrought for all parties (i.e. the victim, the offender, and the community). If this transition is to be successful, resources, Aboriginal and non-Aboriginal co-operation, and well-developed, implemented, and evaluated justice projects will be required. Thus far, there has been little quality assessment of the projects that have been implemented; accordingly, there is much uncertainty about the extent of projects' implementation, the nature and efficacy of the programs and treatments called for, and the impacts on the various parties. It is hoped that this working bibliography can assist in improving that situation.

THE CONTEXT FOR ABORIGINAL JUSTICE INITIATIVES:

A PERSPECTIVE FROM THE LITERATURE

Aboriginal wishes and governmental policy are in apparent unison concerning the desirability of greater Aboriginal self-government. As the latter development evolves, entailed changes regarding the direction of policies and programs, resource allocation, and administrative structures and procedures, require that mechanisms be put in place so that Aboriginal leaders and others can assess whether change is proceeding in an efficient, effective, and equitable manner. This may be particularly required in a 'small community' situation, given the realities of small scattered populations with limited resources and increasing internal differentiation, the dangers of cliques exercising excessive control, and of dependence upon informal processes alone. In addition to issues of self-control and autonomy, there is also the question of the extent to which Aboriginal systems will be different in principle, reflecting different values, priorities, and world views. It is not surprising then that in all institutional sectors attention is increasingly being paid to mission statements, objectives, performance indicators, outcomes, monitoring, and evaluation feedback.

The justice system has considerable importance in discussions of Aboriginal self-government and outside self-government negotiations as well. There is a widespread view, among both governmental officials (especially in the justice system) and Aboriginal leaders, that the field of justice is a centre-piece, if not the leading edge, in the development of greater Aboriginal self-government and autonomy. A common position appears to be that significant changes can and should be readily made with regard to how justice is organized and delivered in Aboriginal communities. Moreover, there seems to be considerable agreement that the conventional justice system has failed Aboriginal people, and that alternative and innovative practices, rooted in Aboriginal traditions and experience, should be encouraged. Accordingly, there is widespread enthusiasm about the prospect of Aboriginal justice moving beyond the present state with its legacy of over-representation (as regards offenders and victims), minimal Aboriginal participation in the determination of justice, and general estrangement. A future is envisaged where Aboriginal justice furthers other Aboriginal collective objectives, incorporates traditions and experiences, manifests Aboriginal control, and deals effectively with the harm that crime and social disorder have wrought for all parties (i.e. victim, offender, community).

From the point of view of styles of governmental approach to "aboriginal people and the criminal justice system", there have been three major policy era (McNamara, 1995), namely:

a) *pre-1975:* Little attention was paid in any official or programmatic way to the distinctive problems, needs, and participation of Aboriginal people in the criminal justice system

b) *1975 to 1990:* Following the 1975 National Conference on Native People sponsored by the Solicitor General Canada and Justice Canada, an agenda was set forth calling for the provision of better access to all facets of the justice system, more equitable treatment, greater Aboriginal control over service delivery, recruitment of Aboriginal personnel, cross-cultural sensitivity training for non-natives, and more emphasis on alternatives to incarceration and crime prevention. Between 1975 and 1990 more than twenty government reports reiterated these types of recommendations.

c) *1991 to the present:* In 1991 two major reports set the stage for the development of a new agenda, one emphasizing the establishment of Aboriginal justice systems where Aboriginal peoples would presumably exercise control over the administration of their governing justice systems and also over how justice would be defined in those systems. These two reports were the Law Reform Commission's 1991 report, Aboriginal Peoples and Criminal Justice, and the 1991 report of the Aboriginal Justice Inquiry of Manitoba. During this period the federal government re-organized its administrative structures and delivery systems for Aboriginal justice. Responsibilities for First Nations policing were transferred from Indian Affairs to Solicitor General Canada. In the Solicitor General Canada the Aboriginal Corrections Policy Unit was formed, and in Justice Canada the Aboriginal Justice Directorate came into being. Both were launched as part of the Aboriginal Justice Initiative. The mandates of these groups were to advance Aboriginal justice interests, improve the response of the conventional justice system and facilitate greater Aboriginal direction of, and innovation in, justice in Aboriginal communities. The 1996 final report of the Royal Commission on Aboriginal Peoples emphasized the need to develop further the new agenda of autonomy and legal pluralism.

A major thrust of the Solicitor General Canada's Aboriginal policing policy has been the development of tripartite agreements (federal and provincial governments and Aboriginal communities). Since 1991 the number of such agreements has increased more than fifty-fold and they now cover about two-thirds of the targeted population. A recent study (Murphy and Clairmont, 1996) has indicated that the large majority of front-line officers in Aboriginal communities across Canada are themselves Aboriginal, and that the fastest growing type of police organization is the self-administered, First Nations police service. The latter is popularly called 'stand alone policing'. None of these police services is fully autonomous and all have established protocols with the R.C.M.P. and/or provincial police organizations; nevertheless the trend towards increased autonomy is unmistakable.

Under the sponsorship of the Solicitor General Canada, important developments have also been occurring in the area of Aboriginal corrections. New Aboriginal-based penitentiaries have been constructed for female and male inmates in western Canada, supplementing extant policies and programs of penitentiary liaison, and Aboriginal counselling and spirituality. The Department of the Solicitor General of Canada also participated in the 1992 Aboriginal Justice Initiative and the 1996 Aboriginal Justice Strategy. The Department established an Aboriginal Corrections Policy Unit in 1992 to support, through research and development, communities to increase their knowledge of correctional issues and to assume greater responsibility for corrections. More recently, the Unit has been mandated to explore offender treatment in selected Aboriginal communities returning to a restorative, healing approach in dealing with criminal activity. The Unit has an extensive communications program and is involved in negotiating the corrections provisions of the federal self-government policy.

The Correctional Service of Canada has also expanded its activities for Aboriginal offenders. The Service has introduced new Aboriginal-specific programs, such as Aboriginal substance abuse programs, to augment their existing core Aboriginal programs that included cultural,

elders and spiritual programming and inmate liaison worker programs. Two new penitentiaries have been constructed for female and male inmates in western Canada. Both institutions were developed in partnership with Aboriginal people and reflect a healing approach to institutional corrections. The National Parole Board has introduced elder-assisted parole hearings in the Pacific and Prairie regions.

Since the early 1970s Justice Canada has had two regularly funded programs relating specifically to Aboriginal people, namely a Native Legal Studies Program, particularly for Metis and non-status Indians, and the Native Court Worker Program. The latter is a federal-provincial, cost-shared program which has been slightly modified over the years (e.g. to include applicability to young offenders) and which has been the subject of considerable policy deliberation over the past decade. The discussions have largely centred around expanding the authorized areas for funding (i.e. expanding the role of the court worker to include other justice activities such as public legal education, and general justice work in the community).

In 1992 the Federal Government established the Aboriginal Justice Initiative in the departments of Justice and Solicitor General. For its part, Justice Canada formed the Aboriginal Justice Directorate whose role was to examine community-based strategies through the funding of Aboriginal justice initiatives on a pilot project basis. Renewed in 1996 as the Aboriginal Justice Strategy, Justice Canada expanded its role to support the creation of long-term, viable justice programs and institutions that are cost-shared with provinces and territories. Particular emphasis is placed on those communities that are engaged in negotiating, or are working towards, sectoral agreements for justice under the inherent right of self-government.

A new element of Justice's strategy is the Aboriginal Justice Learning Network, an initiative designed to mobilize key players in the justice system (i.e. judges, police, crown attorneys and correctional workers) and Aboriginal people to work towards common objectives. A major emphasis of the Network is to support Aboriginal communities to explore culturally appropriate justice processes, such as circle sentencing and healing circles, and incorporate new Aboriginal-based approaches that appear to work in other countries (i.e. family group conferencing).

There are some special circumstances that are especially relevant to the development of Aboriginal policing, corrections, and justice initiatives, and especially to restorative justice initiatives. As Turpel (1993) has observed, Aboriginal communities have seen their societies and cultures destroyed in large measure by European colonization, but there remains, certainly among some Aboriginal peoples in the highly diversified Canadian Aboriginal community, both a difference in world view vis-à-vis the larger Canadian society, and a desire to implement a different kind of justice system. It is also important to appreciate the pattern of crime and social disorder that characterize many Aboriginal communities, namely a pattern emphasizing personal assault and public disorder (LaPrairie. 1994; 1996). These latter offences appear to reflect, at times, a community breakdown, and certainly suggest the need for justice initiatives that reconcile people and facilitate community development. At the same time Aboriginal community justice has to contend with the common pattern of a small group of recidivists (usually young adult males), and the less common pattern of extensive female crime, both of which present challenging rehabilitative problems.

The literature indicates that the small size of many Aboriginal communities raises issues of adequate resources to sustain justice initiatives (e.g. avoiding burn-out among staff and volunteers), and of bias in enforcing social disorder. At the same time these small communities, as Depew (1996) has observed, have an ability to "reproduce themselves as a community of relatives and friends", to reproduce communitarianism which can be an effective underpinning for restorative justice programming. With increasing education, and the development of regional networks (linking small communities in a tribal or multi-tribal system), the strengths of small communities may be harnessed to effectively serve justice objectives. The lack of resources for many communities also can create what LaPrairie (1994) has termed "funding dependency", where available funding rather than community needs and preferences shape Aboriginal justice initiatives. Clearly there is a challenge for Aboriginal peoples to forcefully advocate their own solutions, and a challenge for governments to respect Aboriginal differences.

There are several recurring themes in the literature concerning Aboriginal justice initiatives. As noted above, many Aboriginal and non-Aboriginal leaders consider Aboriginal justice as the leading edge in the movement towards Aboriginal self-government. These initiatives may have considerable symbolic significance for successful Aboriginal stewardship of Aboriginal life, as well as for their inherent rehabilitative and healing potential. The literature shows that there are no profound legal or constitutional obstacles to the creation of quite different Aboriginal justice programs and practices (e.g. Hunt, 1991; Macklem, 1992; Royal Commission on Aboriginal Peoples, 1996). Many commentators have emphasized that for a variety of reasons, some intrinsic such as the strategies for healing, and some extrinsic such as the band organization imposed by the Indian Act, Aboriginal justice initiatives have to be community-based. In light of the social disorder circumstances noted above, justice initiatives are seen as both requiring, and impacting upon, community development (LaPrairie, 1996; Stuart, 1997). Commentators such as McDonnell, 1995; Fitzpatrick, 1992; and Monture, 1995), referring to the significant internal differentiation that exists and the competing alternative justice strategies, have stressed the need for widespread "community conversations", involving all sectors of the community. Another important theme has been that Aboriginal communities may well be at the forefront of the increasingly popular restorative justice movement, because the failure of the conventional justice system has been so evident in relation to Aboriginal peoples, because Aboriginal emphases on healing and holistic approaches are so compatible with restorative justice principles, and because both Aboriginal and restorative perspectives emphasize rebuilding communities. At the same time, as Jackson (1992) and others have observed, Aboriginal justice thinking appears often to differ from restorative justice in the larger society in that in the Aboriginal instances there is more emphasis on collective responsibility, greater community involvement and more explicit spirituality.

Overall then, it can be argued from the literature that the main push factor for the proliferation of Aboriginal justice initiatives has been the consensus, among Aboriginal peoples and justice officials, that the conventional justice system has not worked well for Aboriginal people. The main pull factor has been the congruence of Aboriginal aspirations and governmental policy with respect to greater autonomy and self-government for Aboriginal peoples. There is scant, quality material available on the extent to which Aboriginal justice initiatives are any more effective,

efficient, and equitable than the justice provided by the mainstream system. There is little information on the actual implementation of programs, on the treatments called for, or on the intermediate or long-tern impact for victims, offenders, and communities. Insofar as Aboriginal justice initiatives reflect well the ideas and methods of restorative justice, there would be reason for scepticism. The diversion, mediation, and other restorative justice programs, extensively implemented in North America in the 1960s and 1970s proved to be relatively ineffective and inefficient (Feeley, 1983; Nuffield, 1997). Still, the restorative justice movement has been resurrected throughout North America (Braithwaite, 1996), testimony both to the flaws of the conventional justice system, and to the potential of restorative justice. And Aboriginal communities with their traditions, socio-demographics, and potential for communitarianism might well lead the way. If that is to happen then well-developed and well-implemented programs and quality evaluations will be required.

That Aboriginal people are taking steps toward greater involvement and control over justice and corrections in their societies is an important part of their rebuilding as nations. The nations that inhabited this continent before contact had their own systems of justice though they were seldom, if ever, separated from the daily workings of their everyday lives. As we approach the millennium it is fair to say that it would be virtually impossible to totally recreate such systems, but that does not mean that First Nations must buy into the justice system of Canadian society with its adversarial approach and long periods of unproductive detention. Aboriginal people are searching for, and some have found, a justice that suite them in today's world. Understanding these approaches will not only help them to refine and improve but it will allow Canadian society to learn more about justice systems which may very well suit better than the one which currently serves its citizens.

PART A

CONTEXTUAL AND ACADEMIC BIBLIOGRAPHY

Aboriginal Corrections Policy Unit (eds.). The Four Circles of Hollow Water. Ottawa: Supply and Services, 1997

This is an exceptional document which places in perspective, from a variety of standpoints, the well-known Hollow Water Healing Circle (see Lajeunesse below). The four circles are the Ojibwa Circle, the Hollow Water Circle, the Victim Circle and the Offender Circle. The Ojibwa Circle is discussed in relation to a variety of themes, including sexual norms and dealing with deviance, in pre- and post-colonization Ojibwa culture and society. The Offender Circle succinctly summarizes the latest professional knowledge about treating sexual abuse offenders, from a non-Aboriginal perspective. At the same time the authors show how the cognitive-behavioural treatment orientations which have yielded some success are generally quite consistent with the theory and practice underlying the Hollow Water approach. Some differences are noted, especially the greater emphasis in the latter on holistic treatment involving victims, offenders, and the community at large, an emphasis explained in terms of Ojibwa culture and the imperatives of living in small, somewhat isolated communities. The Victim circle explains the pain and processes of victimization, often in the words of the victims, and also convincingly argues for a different type of healing strategy as being required in communities such as Hollow Water, specifically the strategy evidenced in the community holistic circle healing. The Hollow Water Circle is discussed in terms of personal histories and descriptions provided by two major participants in that program. They present interesting details on the development of the program since 1983, describe the processes, and comment on the challenges facing this successful indigenous initiative which has revitalized the community, empowered it, and enabled it to deal with a major social problem.

Auger, Donald et al. Crime and Control in Three Nishnawbe-Aski Communities. Thunder Bay Ontario: Nishnawbe-Aski Legal Services Corporation, 1991

This report examines crime and its control in three Nishnawbe-Aski reserves in North-Western Ontario. The methods used included interviews with community members and gathering data from police and court files. The authors compare, by community, perceptions of the frequency and seriousness of different criminal problems, their actual occurrence, the level of charges laid, and the extent to which internal, informal community controls are perceived to exist and are effective supplements or alternatives to the criminal justice system. They conclude that each community is quite different in how it perceives and relates to the criminal justice system but that, overall, residents want both to strengthen community involvement and community controls and, as well, to have the mainstream criminal justice (albeit an improved version) deal with certain criminal problems.

Barnett, Cunliffe. "Circle Sentencing / Alternative Sentencing", a paper presented at Canadian Criminal Bar meeting, Queen Charlotte City, February 19, 1995

Bonta, James. Offender Rehabilitation. Ottawa: Solicitor General Canada, 1997

This brief report emphasizes that offender rehabilitation can be effectively achieved where the appropriate treatment principles are implemented. The author contends that what is needed is a

cognitive-behavioural approach that takes into account the risk of re-offending and targets needs which are both individual and societal (e.g. group cohesion, self-esteem, community improvement). Client-specific planning, whereby a plan is developed for an offending individual and presented to the court as an alternative to incarceration, can be an effective strategy. While not focused on Aboriginal society the report can easily be related to, and is consistent with, current developments such as treatment programs by Hollow Water First Nation and the Native Clan Organization in Winnipeg.

Braithwaite, John and S. Mugford. "Conditions of Successful Reintegration Ceremonies", British Journal of Criminology, 34 (2), 1994

This paper advances the idea that reintegrative shaming is no small challenge, but that it is possible to effect, and thereby accomplish reduced recidivism, offender reintegration and victim satisfaction. After discussing the family or community conferencing initiatives in Australia and New Zealand, the authors outline fourteen conditions for successful reintegration ceremonies in practice, developing these ideas vis-à-vis the earlier theoretical work of Garfinkle on conditions of successful degradation ceremonies. Several key points here include the significance of getting the victim to participate, the importance of the presence of supporters for both victim and offender, the pivotal importance of the facilitator role in drawing out all parties and maintaining support for all persons, designing a plan of action. and monitoring reintegration agreements. They emphasize story-based training methods that focus on a few core principles namely empower the victim, respect and support the offender while condemning his act, engage the offender's supporters, and focus on the problem and the community not the offender and his pathologies.

Braithwaite, John. "Restorative Justice And A Better Future". Halifax: Dorothy J. Killam Memorial Lecture, Dalhousie University, 1996

In this talk Braithwaite contends that the criminal justice system has been a large failure, with class bias, ineffectiveness and an over-reliance on imprisonment. Of course his chief argument for this failure is its basis in stigmatization rather than reintegrative shaming as a guiding principle. He advances the model of restorative justice and discusses it in relation to victims, offenders, the community, and control by citizens rather than professionals. He acknowledges that restorative justice is micro-level (i.e. inter-personal relationships) but contends that at least it should take into account underlying injustices that represent the macro or societal level. In his view there is a universality of restorative traditions and these traditions now constitute a more valuable resource than the equally universal retributive traditions. Since cultures shape their restorative values and traditions differently there will be diverse social movements. Braithwaite outlines a path for culturally diversified justice based on restorative principles and practices in schools, churches, and indigenous peoples' communities, and the transformation of state criminal justice in urban neighbourhoods through developments such as family conferencing. He cautions against a romantic notion of simply going from state justice to local justice which might result in even greater abuse of power. He is optimistic about blending the benefits of 'the statist revolution' (i.e. the development of the modern state and its justice systems) and the discovery of 'community-based justice'.

Canada, Royal Commission on Aboriginal Peoples, National Roundtable on Aboriginal Justice Issues. Ottawa: Supply and Services Canada, 1993

This roundtable discussion brought together leading Aboriginal political representatives and scholars, governmental leaders, academics and others to frame the justice issues for the Royal Commission. There was extensive consensus on seven points, namely that the Canadian Justice System so far has failed Aboriginal people; that the system has been too removed from Aboriginal people and Aboriginal communities; that there is an emerging Aboriginal system being formulated that is generating different and potentially effective principles for action; that the time for action is now; that there is no fundamental constitutional impediment to change; that local communities should be the bases for change; and that a merging of Aboriginal and mainstream justice system thrusts is very possible.

Canada, Royal Commission on Aboriginal Peoples, Bridging The Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada. Ottawa: Public Works and Government Services Canada, 1996

This is the report of the Royal Commission that focuses on Aboriginal justice issues. It is consistent with the roundtable consensus and sets out a new national agenda for Aboriginal justice, one where improvements are sought in the conventional justice system but also where the prospects for legal pluralism are explored (i.e. where Aboriginal systems of justice are given rein to develop). It is an important contextual document for Aboriginal justice initiatives of the future.

Cawsey, R.A. Justice on Trial: Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta. Edmonton: Province of Alberta, 1991

The Cawsey task force issued three volumes, the main volume noted here, a summary volume, and a third one which contains working papers and bibliography. The task force received many submissions, made site visits, and collected relevant data. Its sections on policing, courts, corrections, and so forth are well developed with solid supporting evidence. This report shows that the Canadian-wide over-representation of Aboriginal peoples in the justice system, as offenders and incarcerates, applies in Alberta. The task force concludes that systemic discrimination exists within the criminal justice system, even when uniform policies are being applied. It advances some 340 recommendations, a third of which pertain to policing. One of the principal recommendations is the re-establishment of community control (as opposed to professional, bureaucratic control) in the criminal justice system. While sympathetic to the possibilities of an Aboriginal alternative to the conventional justice system, it focuses upon improving the present system and strengthening local community controls, explicitly leaving the issue of how autonomous Aboriginal justice might be to negotiations between Aboriginal leaders and the governments. Recommendations are advanced dealing for example with diversion, sentencing panels, Aboriginal justices of the peace, and the location of provincial criminal courts. Interesting presentations were provided the task force by various Aboriginal groups (e.g. the

Blood Tribe analyzed over-representation from the perspective of colonization and also discussed its traditional concepts of justice).

Clairmont, Don. Native Justice Issues in Nova Scotia, 3 volumes. Halifax: Queen's Printer, 1992

These volumes report on extensive research carried out in 1991 and 1992 for the Tripartite Forum on Native Justice in Nova Scotia. The objective was a benchmark needs assessment of justice for the Mi'kmaq people. The volumes are based on surveys of the on and off reserve adult population, focus group discussions, in-depth interviews with offenders, Aboriginal political and organizational leaders, and with Justice officials (police, prosecutors, judges, legal aid and correctional personnel), and analyses of crime and other justice data. The socio-demographics of the Mi'kmaq are detailed and there are analyses of community problems and crime trends. The main sections deal with policing and court-related concerns, detailing preferences, problems and conflicts. Recommendations are advanced with respect to possible initiatives in these two particular justice areas.

Clairmont, Don. "Alternative Justice Issues For Aboriginal Justice" in Journal of Legal Pluralism and Unofficial Law, #36, 1996

This paper discusses the circumstances behind the development of, and the central issues in, recent Aboriginal justice alternatives. It then examines one particular kind of justice alternative, namely adult Aboriginal diversion projects, in four areas of Canada: metropolitan Toronto, Sandy Lake and Attawapiskat in Northern Ontario, and Indian Brook in Nova Scotia. The projects are compared in terms of social context, objectives, protocols, operations, and impact for divertees, victims, and the community. Analytical considerations of equity, effectiveness, and efficiency are considered for each project as well as issues of the extent to which the projects have manifested Aboriginal cultural themes, advanced the self-government agenda, and effected new practices or lessons for restorative justice. The results to date were seen as positive but quite modest in these regards.

Crawford, Adam. "The Spirit of Community: Rights, Responsibilities and the Communitarian Agenda", Journal of Law and Society 23(2), 1996

This paper is an insightful review of Etzioni's celebrated book, The Spirit of Community (see below). Its chief point is succinctly stated by the author: "rebuilding communities is not now, nor ever has been, always synonymous with the creation of social order, moral superiority, and cohesion. An assertion of community identity at a local level can be beautifully conciliatory and socially constructive but it can also be parochial, intolerant, and punitive". Crawford points out some of the dangers of community and communitarianism such as having to contend with differential power relations, coercion within communities, and other constraints, moral and otherwise.

Daly K. "Diversionary Conferences in Australia", paper presented at the American Society of Criminology Annual Meeting, November 20-23, 1996

Daly refers to the large literature on informal justice and the lively theoretical debates that have emerged. She traces the origins of the family group conferencing models in New Zealand and Australia. The major critiques are identified including the critique of family conferencing advanced as an indigenous invention, being a kind of misappropriation of Aboriginal culture or neo-colonial control of same. She discusses these critiques in the light of her observations of a number of conferencing cases. Reporting on conferencing cases she observed that the majority of conference participants were offenders and their supporters, a fact which might explain why victims were the least satisfied! She thought that community building can emerge from conferencing, and that conferencing did more good than harm. In an appended table she lays out how the three different models of conferencing in that region differ by initial theory or aim, pipeline, police role in conferencing, political authority, and offences handled.

Depew, Robert. "Popular Justice and Aboriginal Communities", Journal of Legal Pluralism and Unofficial Law, 36, 1996

Depew places Aboriginal popular justice initiatives in the larger context of community development and crime prevention, both theoretically and globally. In discussing popular justice as a general phenomenon, he emphasizes its assumption of communitarianism (i.e. a strong consensus, cultural homogeneity), its strategic direction of reaching a non-coercive, consensual resolution to disputes and conflicts, and the variety of informal and flexible techniques employed. He raises a number of critical issues concerning popular justice. He highlights, for example, "the rush to embrace 'nostalgic' models which nowadays are usually initiated by the state and could be a form of "net-widening", enhancing governmental control, but doing little to effect desirable change with respect to how social relations are structured. He also argues that often popular justice programs take on the characteristics of professionalism, hierarchy, and bureaucracy, and exclude public participation. They become rather similar to the structures to which they are presumed to be alternatives, thereby becoming more or less appendages, and often second-rate ones at that, to modern justice systems where the emphasis is on legal rights. It is not surprising then that popular justice programs in advanced societies frequently are not selected by eligible accused persons, that the constituency served is often the disadvantaged who cannot command other legal resources, and that there is little actual community development or empowerment. Yet, Depew acknowledges the promise of community-based justice systems that work and provide not only an alternative to the current system but also the possibility of a more comprehensive and effective approach to problems of crime and disorder.

Turning to popular justice in the Aboriginal context, Depew contrasts perspectives which emphasize Aboriginal cultural uniqueness (e.g. Ross, Turpel) and those which emphasize structural factors (e.g. LaPrairie), a distinction that could have significant social policy implications. While favouring the structural perspective, he acknowledges that certain cultural factors may especially apply in Aboriginal communities which he argues are set apart often by "their ability to reproduce themselves as a 'community of relatives and friends' rather than 'communities of strangers'". Depew appreciates the need for better access to a quality of justice that is more in tune with Aboriginal realities and where Aboriginal peoples can claim some ownership and exercise more control. Still, he suggests that underlying proffered

Aboriginal justice interventions (e.g. sentencing circles, healing circles, Aboriginal traditions) has been an illness, healing and health metaphor which is insufficient to the complexities of current Aboriginal society. Depew highlights the situation of women in Aboriginal society in order to illustrate dysfunctional aspects of the "Aboriginal culture as healer" paradigm. He also cites the preliminary results of some pilot projects in Aboriginal justice which suggest victims are less satisfied, that "traditional culture" may be manipulated to defend offender behaviour, that power imbalances are neglected, and that there has been little community-building. There has been precious little in-depth evaluation and scant attention to what the disproportionate levels of person offences, and high female victimization, imply for communities' culture and structure.

Depew contends that justice problems in Aboriginal communities are more complex than the current "healing paradigm" suggests. He refers to power and opportunity structures there that rarely imply shared interests, values, or equality of access. In his view there is a need to reconfigure these structures, and this imperative has somehow to become part of the popular justice movement in Aboriginal society. It is a good argument though it does not address the larger political questions or strategies of the self-government movement, nor the priorities for realizing long-term common interests that may be intricately involved with current emphases on holistic myths and cultural uniqueness.

Donlevy, Bonnie. Sentencing Circles and the Search for Aboriginal Justice. Indian & Aboriginal Law, University of Saskatchewan, 1994

Dumont, James. "Justice and Aboriginal Peoples" in Aboriginal Peoples and the Justice System, edited by the Royal Commission on Aboriginal Peoples. Ottawa: Ministry of Supply and Services, 1991

Dumont contrasts Aboriginal values and behaviours with the non-Aboriginal, abstracting culture from social organization and social ecology. It is largely uncritical and non-empirical in its treatment of Aboriginal culture and does not consider the great variation that existed among diverse groups in relation to size, ecology, and so forth. Dumont discusses Aboriginal culture as respect for harmony, emphasis on reconciliation, respect for the teaching of elders, and the use of ridicule and ostracism to control behaviour.

Etzioni, A., The Spirit of Community: Rights, Responsibilities and the Communitarian Agenda. New York: Crown Publishers, 1993

This book has been heralded around the world as advancing the social movement for communitarian ideals, with the attendant implications of community-based justice and community problem-solving. Etzioni attempts to shift the moral agenda away from individualism and formal legal rights back to the community, away from "market-driven consumerism towards morally-driven, inter-personal relations". He presents a positive vision of communitarian politics more than an attack against liberalism and the all-powerful interventionist state. Arguing for the current need for balance, he emphasizes responsibilities more than rights, the rebuilding of moral communities, and a decentralized pluralism of communities ("pluralism within unity"). Acknowledging that communities may not have resources and may be characterized by power

imbalances and local elitism of one sort or another, Etzioni calls for a 'suasive' rather than 'coercive' community power, and for evaluation to monitor the extent to which the vision of the community is "fully responsive to all the authentic needs of all members of the community". Certainly there are real concerns raised by this book, such as the danger of off-loading responsibilities onto resource-limited communities, but the ideas are clearly articulated and quite timely. The arguments developed seem quite congruent with trends within Aboriginal society for more autonomy, more community-based solutions, and new strategies of healing and balance.

Feeley, Malcolm. Court Reform on Trial: Why Simple Solutions Fail. New York: Basic Books, 1983

This is an excellent analysis of why adult diversion programs accomplished very little in practice in the United States during their heyday in the 1970s. Essentially he contends, and the data bear this out, that too few cases were handled, largely because eligible arrestees did not select this option for very good reasons. Divertees' rates of re-offending did not differ significantly from those of other comparable offenders. In his view the courts, unlike their image in diversion theory, have already adopted flexible and informal alternatives on their own, with the result that "diversion is no big deal" and offers the defendant little while it may provide more hassle and fewer procedural safeguards.

Fitzpatrick, P. "The Impossibility of Popular Justice". Journal of Social and Legal Studies, 2, Vol. 1, 1992

This article is a critique of popular or informal justice as it is, and has been, implemented in modern society. Essentially the author argues that there is much compatibility between informal justice and formal justice and that the former, in practice, draws upon, is constrained by, and legitimates formal justice. In making his points the author refers to the most famous community mediation program in the United States namely San Francisco's Community Boards. He notes that it has features quite compatible with formal mainstream justice such as decontextualizing cases (avoiding larger issues unearthed by a two-party dispute) and the quasi-professional status of the mediators. Fitzpatrick contends that the popularity of alternative justice rests on its expressing values that deservedly elicit broad allegiance, such as equality not only between those in dispute but also between them and the people charged with resolving the conflict. Yet these values are not realized in informal justice programs and there is little specific information in this article on how to do so. The author raises complex issues and his arguments are complex and theoretical. While not ostensibly positive about the chances for 'true' informal justice (see his title) and offering no clear recipes, he does call attention to factors such as equality among all participants, participation, and community support as generating a more authentic informal or alternative justice.

Francis, Bernie. “Mi'kmaw Justice Concepts”, paper given at Aboriginal Awareness Week, Dalhousie Law School, February 6, 1997

Here Francis highlights concepts that can be found in Mi'kmaq language which relate to justice concerns and processes. In particular he isolates four chief concepts and discusses how they represent apology, reparation, reconciliation, and wisdom.

Galaway, Burt, and Joe Hudson (eds.). Restorative Justice: International Perspectives. Monsey, NY: Criminal Justice Press, 1996

This book describes well the recent international experience with restorative justice through this collection of mostly original papers written by scholars from around the globe. The thirty articles, five of which focus on Aboriginal initiatives, deal with a wide range of restorative justice issues and depict the considerable diversity of restorative justice thinking and projects.

In a brief introduction the editors identify some common themes. They indicate that at the core of restorative justice, as reflected in this book, is victim-offender reconciliation. Three elements are seen as fundamental, namely that crime is primarily conflict between individuals, that the goals of justice processes should be reconciliation and reparation, and that justice processes should facilitate the active participation of victims, offenders, and other community members. The centre-piece of the restorative justice experience is considered to be "the offender expressing shame and remorse for his or her actions, and the victim taking at least a first step toward forgiving the offender for the incident". The editors list numerous desired outcomes for victims (e.g. a sense of closure), the offender (e.g. reintegration), and community (e.g. humanizing the justice system). Yet, while advocates, the editors are realistic, noting that "little research is reported in these chapters", and "little rigorous evidence is available to support the extent to which these [purported outcomes] are actually achieved".

Giddens, Anthony. The Consequences of Modernity. Stanford, CA: Stanford University Press, 1990

This is a classic treatise on modernity by one of world's leading sociologists. It discusses how modernity arose, and became a global phenomenon. Particularly significant are the analyses of the kind of processes that it has unleashed, and the risks and promises that modernity holds out for human life. Of special relevance here are three ideas. First, Giddens argues that modernity has been shaped by Western culture with its particular values and structures. Accordingly, traditional societies and cultures, such as Aboriginal systems, experiencing modernity are subject to powerful but subtle pressures to reproduce these values and structures, whether in the field of justice or some other field. Secondly, Giddens discusses processes of modernity such as "distanciation" (i.e. social relations are no longer tied to particular locales), and "disembedding" (i.e. 'lifting out' understanding of social relations from local contexts) which provide the legitimizing basis for the increasing reliance on professional and technical experts. Clearly, to the extent that the local context is deemed to be an essential feature of social relations, and/or there is insufficient trust in professionals, community-based programs in justice (e.g. treatment programs) will be more strongly emphasized. Thirdly, Giddens notes that modernity brings an increased risk of the growth of totalitarian power at the same time as it holds out the promise of multilayered democratic participation.

Giokas, John. "Accommodating Concerns of Aboriginal Peoples Within the Existing Justice System", in Aboriginal Peoples and the Justice System. Ottawa: Royal Commission on Aboriginal Peoples, 1993

Giokas makes two principal points in this article. He emphasizes the need for projects dealing with the development of internal community structures for Aboriginal criminal justice and he argues that the best way to avoid Aboriginal alienation is to avoid the court altogether, diverting people to more appropriate forums where there can be a focus on community methods of restoration and healing.

Green, Gordon. "Community Sentencing and Mediation in Aboriginal Communities", Manitoba Law Journal, 1998

This paper is based on interviews and field observation in six Aboriginal communities in Saskatchewan and Manitoba. No victims and few offenders were interviewed. Starting from the over-representation, inequity, and alienation perspective, the author discusses the new initiatives in six communities serviced by a circuit court and policed by the RCMP. He discusses circle sentencing (extensively utilized in Yukon and to a lesser extent in Manitoba, Quebec, and Saskatchewan), its physical arrangements, emphasis on informality and equality among participants, core attenders, range of styles, legal status of circle recommendations (there is no provision in the *Criminal Code* for these and they may be likened to pre-sentence reports but judges indicate a strong commitment to the recommendations), public accessibility, emphasis on consensus among participants (though not necessarily unanimity), and resource commitment (they take time!). He notes the criteria for selection of cases that have developed in some areas and mentions, too, protocol negotiations (e.g. Hollow Water) and the possible screening by a local justice committee. Some problems, and other limitations highlighted, concern domestic violence cases where there may be power imbalances between the victim's and the offender's 'sides', long delays required to shore up victim participation, the need for protection especially for victims, and the need for some impartial agent to facilitate the interaction. Also discussed are elder panels and sentence advisory committees (here the sentencing circle committee may meet independently and then submit recommendations to the judge to save court time as well as empowering the community), and community mediation (the *Criminal Code* was amended in 1996 to recognise adult alternative measures programs). In considering the impact to-date the author notes that it is still premature but the following points can be advanced: the sentencing circle has been viewed by Aboriginal people as having traditional significance; victim involvement has been inconsistent and the support available for them sometimes less than that for offenders; a common view is that for offenders "it's an easy way out" especially as treatment options are so limited; concern exists about power imbalances though there has been little direct sign of attempted political interference; usage is still quite limited; statutory reform is unnecessary though there has been little appellate court comment and there may be issues regarding Aboriginal rights here that require appellate decisions. Green thinks that the initiatives could well apply to non-Aboriginal communities.

Hall, G.R. "The Quest for Native Self-Government: The Challenge of Territorial Sovereignty", University of Toronto Faculty of Law Review, 50, 1992

The author presents an interesting argument that the principle of territorial sovereignty threatens to make self-government among Aboriginal peoples unworkable. Self-government presumably requires the establishment of a separate legal order applying only to Aboriginal people but the concept of territorial sovereignty, reflected in the usual interpretations of the 'rule of law', has led to judicial judgements that the criminal law of Canada must always be followed where there is conflict between the criminal law and Aboriginal traditions and customs. Hall contends that territorial sovereignty is not an absolute in the existing legal order, pointing to how taxation law, admiralty law, military law and diplomatic immunity all provide flexibility in the application of the sovereignty principle. In his view the existing law, imaginatively and generously interpreted, can become a positive force for the recognition of Aboriginal self- government and can free Aboriginals to design self-government in creative and innovative ways. The author provides detailed case and statute review to support his arguments.

Hamilton, A.C. and C.M. Sinclair. The Justice System and Aboriginal People: Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1. Winnipeg: The Queen's Printer, 1991

This is the first of two volumes produced by the above commissioners of the Public Inquiry into the Administration of Justice and Aboriginal People in Manitoba. While this volume focuses upon general considerations and contains numerous recommendations covering the whole gamut of criminal justice issues, the second volume deals specifically with the deaths of Helen Betty Osborne and John Joseph Harper, specific incidents that sparked the demand for a public inquiry. Volume One is an indictment of the justice system as far as Aboriginal peoples' rights and level of received service are concerned. While many of the recommendations as regards policing, and the administration of justice, are similar to those advanced in other public inquiries, the commissioners call for a major reorganization of justice for Aboriginal peoples in Manitoba, going far beyond the Marshall Inquiry (see below) in calling for province-wide, Aboriginal-controlled justice structures for Aboriginal peoples and a significantly autonomous Aboriginal system, based on Aboriginal principles and experience.

Harding, J. and B. Forgay. Breaking Down The Walls: A Bibliography on the Pursuit of Aboriginal Justice. Regina: Prairie Justice Research, University of Regina, 1991.

Hickman, A. Report of the Royal Commission on the Donald Marshall Jr. Prosecution. Halifax: Province of Nova Scotia, 1989

This Royal Commission was sparked by the wrongful prosecution of Donald Marshall Jr., a seventeen year old Mi'kmaq youth who served eleven years in prison for a murder that he did not commit. The two year inquiry issued its findings and recommendations, from hearings, conferences, and original research, in seven volumes. Volume 1 provides the overall findings and recommendations while other volumes deal with related themes. Perhaps of most relevance here is Volume 3 , S. Clark's The Mi'kmaq and Criminal Justice in Nova Scotia: Research Study. The Royal Commission concludes that Marshall's status as an Aboriginal contributed to the miscarriage of justice (i.e. his wrongful prosecution) and that racism and two-tiered justice

(i.e. one treatment for the powerful and another type for ordinary citizens) are found in Nova Scotia's justice system. Its eighty-two recommendations deal with compensation for Marshall and his family, matters of the administration of justice in Nova Scotia (e.g. the relationship of police to prosecution, the independence of the prosecutor's office vis-à-vis political authorities), policy concerning the wrongfully convicted, policing, minority group issues, and Mi'kmaq justice concerns. The Marshall Inquiry was focused on matters of fairness and equity and ensuring that the justice system involve better, and treat better, the Mi'kmaq people. It had an inclusive thrust, improving the existing system, and did not explore issues of Aboriginal autonomy, difference and so forth. Its recommendations as far as Aboriginal justice is concerned are modest but do call for courts on the reserve, court workers, recruitment of Aboriginal people for police and court roles, community involvement, diversion, and so forth. Although the specific recommendations are modest the Inquiry has proved to be of considerable symbolic significance for the Mi'kmaq and provides a basis for progress; in that sense it appears to have been seen in very positive terms. And while the Commission's focus is on integration, it does conclude that "Native Canadians have a right to a justice system they respect and which has respect for them. And which dispenses justice in a manner consistent with and sensitive to their history, culture and language".

In the accompanying volume, Mi'kmaq and Criminal Justice in Nova Scotia, Clark discusses Mi'kmaq justice experiences and viewpoints especially on the three most populous reserves and in metropolitan Halifax. He contends that "the process of justice has become an essential component in Aboriginal plans to exercise self-determination" and this contention is borne out by appendices to his study which are submissions on justice from Mi'kmaq leaders.

Hunt, C. "Aboriginal Decision-Making and Canadian Legal Institutions" in Journal of Law and Anthropology, 6, 1991.

This paper deals with the question of the extent to which present methods of decision-making in law and justice, in Aboriginal communities have been built upon traditional practices, and to what extent have they been influenced by non-Aboriginal methods. The article is based on library research, examining statutes, court cases and the like. The author notes that both the Inuvialuit Agreement of 1984 and the Cree-Naskapi Act (a fundamental part of the James Bay land claim agreements of 1975 and 1978) do entail significant Aboriginal uniqueness. Inuvialuit procedures clearly allow for a major role to be played by local people (e.g. in assessment of development applications) and the procedures "are very different than would be found in a non-Aboriginal setting elsewhere in Canada". The Cree-Naskapi Act is seen as "far beyond the Indian Act in recognizing customs and traditional forms of decision-making" (e.g. community involvement, band distinctiveness). Recent court rulings have also strengthened the power of Indian band by-laws, in the case of conflict of a validly-enacted band by-law in conflict with a more general federal fishery regulation. The Constitution Act of 1982 (especially s. 35) has rooted the special status of Aboriginal peoples and provided an entry for them to the constitutional amendment process. While constitutional entrenchment of Aboriginal rights of self-determination remains unfulfilled the federal government has been pursuing self-government arrangements on a band-to-band basis. Some bands such as the Sechelt of British Columbia have formalized decision-making (e.g. electoral rules, band law authority procedures) that are

not very different from those followed in non-native communities. The author also notes that there are some unique aspects (e.g. no party politics as such) in the operations of governments in the Northwest Territories and some differences in the courts and law enforcement that reflect Aboriginal uniqueness. The article is clearly an overview of the amalgam of the old and the new, reflecting the way Aboriginal communities are evolving to their changing circumstances and advancing in the adaptation of tradition to Canadian laws and institutions. The article is now somewhat dated, missing of course all the developments in the justice field that have occurred in the 1990s. Still it focuses upon an important question and by example provides a useful methodology for examining the question.

Jackson, Michael. Locking Up Natives In Canada. Ottawa: A Report of the Canadian Bar Association Committee on Imprisonment and Release, 1988

This monograph details the considerable over-representation of Aboriginal people in Canada's federal and provincial prisons. The over-representation was particularly outrageous in Saskatchewan, but it was (and continues to be) very significant throughout western Canada and even in the eastern provinces. In addition, Jackson documents the extent to which the justice system as a whole controlled Aboriginal peoples insofar as they had the highest rates of charges, arrests, and incarceration of any ethnocultural grouping in Canada. The report now has the status of a classic, both for its indictment of the Canadian justice system and for its suggestions concerning Aboriginal empowerment. More up-to-date incarceration data can be found in several works cited in this bibliography, notably LaPrairie's Examining Aboriginal Corrections In Canada.

Jackson, Michael. "In Search of the Pathways to Justice: Alternative Dispute Resolution in Aboriginal Communities", U.B.C. Law Review (Special Edition: Aboriginal Justice), vol. 26, 1992

In this ninety-two page paper Jackson provides a comprehensive overview of Aboriginal justice initiatives as a social movement. He outlines the several theoretical explanations commonly used to explain the over-representation of Aboriginal peoples in the criminal justice system and observes that each entails a different package of alternative initiatives. The cultural model (i.e. the clash of Aboriginal and western cultures) invites alternatives such as cross-cultural training, native court-workers and, more generally, indigenization. The structural model (i.e. the focus on economic and social marginality) invites alternatives such as greater access, fine options, and anti-poverty strategies. The third model, and the one held by Jackson, stresses the factor of colonization and subjugation. Its entailed alternatives would focus on Aboriginal peoples' right to control their own destiny, including control over the justice process in Aboriginal communities. Jackson observes that many Aboriginal groupings have advanced the latter position (see submissions by the Blood Tribe to the Cawsey Task Force and the report of the Osnaburgh/Windigo Tribal Council, cited in this bibliography).

In discussing, briefly, the nature of Aboriginal systems of law and justice, Jackson refers to American and Australian materials as well as Canadian. He identifies some distinctive themes (e.g. the emphasis on community, on restoration and reintegration rather than punishment, the

higher priority given to collective rights) but cautions that Aboriginal systems are themselves quite diverse. Jackson also places Aboriginal justice initiatives vis-à-vis the alternative dispute resolution movement in the Canadian justice system. He notes that there has been a clear trend over the past twenty years in calling for greater focus on restorative justice principles in criminal justice policy and practice. Recently much attention has been given to the many parallels between restorative justice principles and Aboriginal traditions of justice. At the same time he argues that there are sharp differences, such as the greater emphasis in Aboriginal systems on collective responsibility, on social and family networks, and on Aboriginal spirituality. Consequently, while the shift in the mainstream justice system towards restorative justice may permit greater accommodation between it and emerging Aboriginal systems, Jackson contends that the legal pathway to justice for Aboriginal people must be found in their own initiatives.

In the last section of the paper Jackson discusses recent alternative dispute resolution initiatives in Aboriginal communities. He cites the recommendations of several major inquiries (e.g. Marshall, Cawsey) and specifically details initiatives advanced by the First Nations of South Vancouver Island (Coast Salish), and the Gitksan and Wet'suwet peoples of North-Western British Columbia. Jackson notes that these initiatives focus upon issues of special concern to the communities (e.g. sexual abuse, wife battering) and entail strategies that are unique to Aboriginal systems (e.g. the significant role of elders). While acknowledging that such initiatives can be developed within the existing justice system, he makes it clear that enabling legislation would guarantee respect, and perhaps funding, from non-native participants in the criminal justice process, as well as facilitating a sense of ownership and accountability in the Aboriginal communities. It can be noted that virtually all Aboriginal justice initiatives cited by Jackson were in the preliminary stage and did not have significant secure funding; nor was there any evidence marshalled to assess issues of equity, efficiency and effectiveness with respect to the new Aboriginal justice initiatives.

Overall, while the examples provided may be dated, this is an excellent paper which consistently develops a particular viewpoint.

Krawll, Marcia. <u>Understanding the Role of Healing in Aboriginal Communities</u>. Ottawa: Solicitor General Canada, Aboriginal Peoples Collection, 1994 (also available on Internet homepage (http://www.sgc.gc.ca)

What does healing mean in Aboriginal communities? How does the conception of healing take into account the offender, the victim and the community? Do Aboriginal peoples and non-Aboriginal government officials understand healing in similar ways? How can government, especially Solicitor General Canada, facilitate healing in Aboriginal communities? In this brief report Krawll discusses the results of her research into these timely questions. Using a variety of methods, she explored perspectives and experiences regarding healing in several Aboriginal communities (including interviews with elders, youths and caregivers) and secured the views and opinions of federal and provincial officials. All told, she contacted some 121 persons across Canada. In presenting her research results Krawll develops a handful of organizing themes and draws out their central points, illustrating them with quotations from the persons interviewed.

The central conclusions Krawll draws from the research are three-fold. First she suggests that there is both a common core and also much variety among Aboriginal peoples with respect to their perspectives and experiences of healing. The common core centres on the idea that healing is a process which has three key aspects, that healing comes from within individuals and moves outward to encompass the family and the community, that it must reflect a balance among all parts of life, and that, while initiated in discrete fashion through specific programs (e.g. alcohol and drug counselling), it must become holistic. Secondly, Krawll contends that healing can be seen as community development in a broad sense. The people interviewed envisaged healing in the context of the healthy community. From a justice perspective this entails a recognition that both offender and victim are part of the same community and that the community must support both as part of a healing-based approach. As community development, Krawll reports that the key indicator of healing is that people take responsibility for their community. The community development process usually has been initiated by core community groups and is built upon what is already in place. Thirdly, Krawll observes that Aboriginal peoples and non-Aboriginal peoples (at least, in her sample) understand and feel about healing in quite similar ways. Moreover, they tend to have similar views on the role of government as listener, observer, and facilitator, allowing the community itself to maintain control and develop/acquire the skills and resources needed to carry on more autonomously.

The report has some limitations. The heavy dependence on quotations means that there is little context given either for the communities involved or the individual interviewees. It is unclear as to how much consensus is associated with the themes that the author has derived from the research. Also, the role of government is rather superficially developed and it seems that there are no principles for governmental policy other than to support community actions. Still it is a useful contribution to an important issue in Aboriginal justice.

Kulig, Paula. "Balancing Rights: The Native Justice Debate" in Canadian Lawyer, February, 1993

In this brief article the author presents, without revealing her own bottom-line position, some pros and cons for the idea of a separate Aboriginal justice system. The author notes that while commission reports (e.g. the Manitoba Aboriginal Justice Inquiry of 1991) and many experts, academic and political, have strongly supported the concept, governments at both the federal and provincial levels, have emphasized accommodation within the existing justice system, albeit promising significant positive change for Aboriginal peoples. In the author's view a central issue in the controversy concerns the status of the Charter of Rights and Freedom. Governments, as well as certain Aboriginal interests, have emphasized the need to guarantee the Charter rights and freedoms for all Canadians, while proponents of a separate justice system, in the author's view, either discount the Charter's significance or suggest that Aboriginal peoples can develop an adequate alternative to it.

LaPrairie, Carol. "The Young Offenders Act and Aboriginal Youth" in Joe Hudson et al, (eds.). Justice and the Young Offender in Canada. Toronto: Wall and Thompson, 1988

This paper establishes the considerable over-representation of Aboriginal youth in the criminal justice system. Associated with this pattern were major structural differences between Aboriginal and non-Aboriginal youth (e.g. income, education, family background) but little difference in the kinds of offences committed. Causes of Aboriginal delinquency were identified as culture conflict, boredom, alienation, and loss of parental discipline, all generated by years of colonialization and underdevelopment. Environmental factors such as socio-economic marginality, geographic isolation, and community erosion suggest that Aboriginal youth may be especially vulnerable to justice processing and hence the harsher effects of some YOA provisions. To correct for this systemic structural discrimination, in LaPrairie's view, requires more community control over justice matters where traditional customs, values, and practices can be incorporated but this will require significant resources as well as creative interventions.

LaPrairie, Carol. "Community Justice or Just Communities? Aboriginal Communities in Search of Justice". Folk Law and Legal Pluralism Symposium. Mexico City, 1993

The theme of the Mexico conference was "the need to move beyond the confines of legal institutions to other bodies and agencies which construct social relations". There was substantial criticism, however, concerning the legitimacy and the efficacy of popular justice and the extent to which it is really an alternative to state control and more than a tool for the locally powerful elite. As LaPrairie observes, "legal pluralism and community justice have no fixed political content and may serve either progressive or reactionary politics". LaPrairie tries to make a case for the former, arguing that popular justice, especially Aboriginal justice initiatives, should be directed at transforming communities into 'just communities', clearly a broader role than the mainstream justice system has.

Turning to justice initiatives in Aboriginal communities, LaPrairie discusses a variety of issues in relation to her own justice research among the Cree, in the Yukon, and in the inner cities of Canada. Her argument is that there is an absence of detail in the plans for Aboriginal justice, little discussion of community needs and realities, and that the agenda is largely driven by the idea of self-government where jurisdiction is the key issue. The over-representation of Aboriginals among offenders and incarcerates also fuels this uncritical discourse in her view. The net result is less attention to structural problems and less discussion of needed resources (both material and educational) for Aboriginal communities, both of which militate against the creation of 'just communities'.

LaPrairie, Carol. Justice for the Cree: Communities, Crime and Order. Cree Regional Authority, Nemaska, Quebec, 1994

This major study involved a team of several scholars headed by LaPrairie. Perhaps the fundamental thesis developed here is the idea that there should be less focus upon oversentencing and the response of the justice system and more attention paid to the cultural and structural factors that generate crime and conflict, and in particular to the community and community development. She emphasizes on and off reserve differences, the problem of repeat offenders, the erosion of traditional social controls due to irrevocably changed social and economic circumstances, and variation by community. There is a vision here, more than a

convincing analysis of either the problem or the need for community control. Certainly, specific interventions such as extensive mediation, alternative dispute resolution, and community policing are encouraged and seemingly unproblematic but the core vision is not well delineated.

LaPrairie, Carol. Changing Directions in Criminal Justice. Ottawa: Department of Justice, 1994

In this paper LaPrairie discusses new initiatives in popular or restorative justice based on the premise that the conventional criminal justice systems ignore the social context of offences and marginalize the offender, the victim, and the community, whereas restorative justice emphasizes social rather than legal goals and empowers communities and individuals in dealing with problems and influencing the direction of the criminal justice system. She discusses the theory behind the restorative justice movement (e.g. communitarianism, community, restorative, or transformative justice). She goes on to compare family group conferencing and sentencing circles, two of the principal restorative justice interventions and common in Australia / New Zealand and Canada (primarily the Yukon and Saskatchewan) respectively. She compares the two in terms of theory, definitions and objectives, process and principles, and effectiveness. In general, while both share a large common 'domain of sentiments', sentencing circles are judged to be more Aboriginal-focused (though family conferencing advocates usually link their approach to Aboriginal traditions as well), more focused on the offender than the event, more oriented to adult offenders, less clearly formulated in theory and in operational guidelines, and more open to abuse and misunderstanding. For example, in her view, the sentencing circle intervention is often accompanied by unexamined postulates (e.g. cultural consensus) and underestimates power imbalances in the community. LaPrairie appreciates the arguments for flexibility and "the greater good" of political imperatives but argues that critical analyses and assessments should be encouraged.

This paper provides a brief but valuable description of the processes and principles that characterize sentencing circles, clearly pointing to the considerable vagueness that exists on both fronts. LaPrairie lists the chief criticisms of commentators as the need for guidelines in setting up and operating circles, the potential for sentence disparity among similar criminal cases, the role of and impact on victims, the 'representativeness' of participants, how offences and offenders for circle sentencing are selected, the lack of procedural safeguards, the community impact, and the degree to which sentencing circles reflect Aboriginal traditions and value. As of the end of 1994 there have been approximately 300 circle sentencing experiences in the Yukon Territories, about 100 in Saskatchewan and a handful in Manitoba and British Columbia.

LaPrairie, Carol. Seen But Not Heard: Native People In The Inner City. Ottawa: Department of Justice, 1994

This monograph presents the results of an imaginative and valuable research project undertaken by LaPrairie. She focused upon Aboriginal persons in the inner cities of Canada and, with her colleagues, interviewed 621 such persons in four cities, namely Montreal, Toronto, Regina and Edmonton. The research addressed several key issues: why are Aboriginal people so overrepresented in terms of charges, arrests, and incarceration? why do these levels of

overrepresentation vary so significantly between eastern Canadian and western Canadian inner cities? are there sources of difference and heterogeneity among inner city inhabitants that are crucial for policy purposes? Imaginative techniques (e.g. consulting local service agencies, hiring contact persons, paying participants) were utilized to identify respondents and arrange the interviews which were conducted in the field. The monograph is divided into three sections. Part one deals with the inner city sample as a whole and examines the diverse social strata and their associated criminal justice patterns. Part two provides a comparison of the four inner cities in terms of social strata, life experiences and criminal justice patterns; part three deals with victimization and family violence among inner city Aboriginal people.

LaPrairie shows clearly the considerable socio-economic disadvantage, and overrepresentation of inner city Aboriginal people, compared to Canadians as a whole, in arrests and incarceration. Early in the research LaPrairie developed a typology of inner city Aboriginal people which had three categories, namely street people, inner city residents but not street people, and users of inner local agencies and services who lived outside the inner city area. To a large extent these groupings constituted a continuum from high to low with respect to incidence of arrests, serious offences, incarceration, experience of serious family violence in youth, low income, unemployment, and current levels of social disorder. She found that western inner cities differed from eastern inner cities in terms of the proportion of their Aboriginal population falling into categories one and two, and in terms of the Aboriginal persons there being in more criminogenic social environments. LaPrairie also found that the most vulnerable and victimized Aboriginal people were those who were most at risk of being serious violent offenders, and who had the most violent and abusive family backgrounds. A strong link was established between early family abuse, juvenile conflict with the justice system, and adult problems and incarceration. There is much other valuable descriptive material in this report involving issues such as who uses Aboriginal-oriented service agencies, variation in attitudes towards the police, racism, etc.

In drawing out the policy implication of the research, LaPrairie emphasizes the importance of measures to effect social stability (e.g. housing, jobs) and to deal with the serious family and related child abuse. Unless childhood conditions can be improved and adult social and economic marginality overcome, the prospects for positive change would be limited. In light of the diversity of the inner city Aboriginal population and the severity of its problems, treatment programs have to be finely crafted and tailored to specific subpopulations. The author also calls for changes in the way the criminal justice system functions with reference to the inner city, urging a more substantial community partnership in policing, and a diversion or restorative justice approach which is appropriately generous in its criteria for eligibility.

LaPrairie, Carol. "Conferencing In Aboriginal Communities In Canada: Finding Middle Ground in Criminal Justice?", Criminal Law Forum, vol. 6, no 3, 1995

Here the author reflects on the family conferencing developments in Australia and on how they might emerge in Canada's Aboriginal communities. She reviews the origin of family conferencing in New Zealand and Australia and the associated theoretical underpinnings. The core sequence of conferencing is identified as the giving and acceptance of an apology between offender and victim. The role of the facilitator is especially to see that the key components of reintegrative

shaming occur. LaPrairie observes that conferencing presents an opportunity for offenders to make new connections with people. In addressing the implications for Aboriginal communities in Canada she notes that family conferences should be expeditious, involve the extended families, and feature trained facilitators. She suggests that such conferencing can bring people together and help develop communitarianism and community institutions. Conferences also may represent safe places where conflicts can be talked out and resolved. She emphasizes the required presence of an authoritative extended family representative, and a trained facilitator to effect both strong community commitment and protection of rights respectively.

LaPrairie stresses the need for projects and programs to be independently and dispassionately evaluated. Implementation and impact studies need be done. Community and project personnel have to be involved in negotiating the evaluation framework and key criteria (e.g. what do we mean by success?). She concludes by arguing that projects have to be assessed in relation to community issues, project objectives, and government priorities, and she offers very useful guideline questions for the community and project referents.

LaPrairie, Carol. The New Justice: Some Implications For Aboriginal Communities. Ottawa: Department of Justice, 1996

Here the author discusses the restorative justice movement and its emphasis on community. She has a long section on the concept of community and where its current thrust comes from – an effort to restore "a civic culture" in the larger society, and the self-government thrust among Aboriginal peoples. She tackles five aspects of community, namely defining the community (geographical and interest bases), representation (warning against the engulfment of offenders at the expense of victims and others), involvement and participation (warning about the simplicity of myths with respect to the level of communitarianism that exists), competing justice roles (how to transcend dominant local groupings as well as the mainstream styles), and accountability (regular monitoring and accounting). In her final section she bemoans the "almost total lack of evaluation material and findings", and notes that the few evaluations that have been done point to the failure of incorporating victims, and to the lack of community understanding of the initiative. LaPrairie goes on to suggest guidelines or principles to be heeded in developing local justice projects.

LaPrairie, Carol. Understanding The Context For Crime and Criminal Justice Processing of Aboriginal People In Saskatchewan. Ottawa: Department of Justice, 1996

Here focus is on the heavy over-representation of Aboriginal offenders in the criminal courts of urban centres in Saskatchewan. The majority of offences are shown not to be serious, and the over-representation in part a function of recidivism among a small group of offenders. The over-representation itself is seen as significantly, though not entirely, accounted for by demographics and economic marginality, and the implications of the latter for current modes of processing cases in the courts (i.e. the disadvantaged are more likely to be incarcerated). LaPrairie makes a strong case for putting more resources into dealing with the socio-economic situation of off-reserve Aboriginal youth, arguing that they constitute the vulnerable core of western Canada's

inner cities. She also argues that less serious offences (and similar such prior convictions), as well as processing offences such as failure to appear or failure to comply, should not exclude such youth from diversion and alternative measures. In her view much greater effort in the justice system should be devoted to restorative justice and problem-solving.

LaPrairie, Carol. Examining Aboriginal Corrections In Canada. Ottawa: Solicitor General Canada, Aboriginal Peoples Collection, 1996 (also available on Internet homepage (http://www.sgc.gc.ca)

This monograph provides an in-depth assessment of Aboriginal corrections in Canada. It is based on a variety of methods (interviews, analyses of corrections data, excellent bibliographical review, etc.) and always seeks to place Aboriginal corrections in the larger contexts of Canada's corrections policy, Aboriginal social and cultural realities, and general criminological theory. The author establishes the point that Aboriginal peoples are particularly over-represented in prisons in western Canada. She contends that this is primarily because Canada, as a society, uses the imprisonment sanction quite heavily in comparison to other societies, and Aboriginal peoples, particularly in the prairie provinces, fall disproportionately into the disadvantaged socio-economic category most vulnerable to being caught up in the criminal justice system. She also discusses the programming available for Aboriginal inmates, noting that not only is there insufficient information on the value of the mainstream programs for Aboriginal offenders, but also that few critical questions or in-depth evaluations have been advanced concerning the cultural and spiritual Aboriginal programming that has become so commonplace in prisons in recent years. Surveys of inmates have consistently indicated that education and employment programs were deemed to be the greatest needs, and substance abuse the greatest problem. The lack of support from the home community and the problems of reintegration there have been quite neglected, perhaps because of presumptions made about Aboriginal communities as a whole. LaPrairie advances many policy suggestions, primarily calling for alternatives to imprisonment, refocusing community sanctions to facilitate reintegration, and community development strategies to get at the primary causes of the social problems that are at the heart of Aboriginal over-representation.

While some of LaPrairie's contentions can be challenged (e.g. the claim of little post-arrest racial discrimination may hold for sentencing and corrections but might overlook areas such as bail and plea-bargaining), she makes many insightful observations (e.g. with respect to Aboriginal offenders one especially sees that dealing with the life circumstances and experiences that result in federal sentences is extremely difficult for the criminal justice system to address). Her central thesis is well developed, namely that the cause of Aboriginal over-representation lies largely in the social and economic conditions of Aboriginal communities (e.g. the legacy of colonialism, discrimination, etc.) and that these same type of factors inhibit current rehabilitative efforts. Consequently there is a need for refocusing community sanctions, and for effecting community involvement and community programs in the context of community development and institutionalization, and emphasizing that the development of local justice interventions must be guided by that larger imperative.

LaPrairie, Carol and Julian Roberts. "Circle Sentencing, Restorative Justice and the Role of the Community", Canadian Journal of Criminology, 1997

In this short paper LaPrairie and Roberts make the case for a more scholarly and critical examination of sentencing circles which have become quite extensive in Canada. After describing circle sentencing (the authors refer to the paradigmatic case "R. v. Moses") they note that it is part of the restorative justice movement which in Aboriginal communities is also taking place in the context of self-government and empowerment of communities. They raise several important questions regarding restorative justice initiatives: is the practice carried out as theoretically conceived? are all legal guarantees there for both offender and victim? is the overall position of the victim better off under this approach? is it better for the rehabilitation and education of the offenders? for what type of offences and kinds of offenders is it suitable? is it an alternative or just another strategy? how does restorative justice impact on the community with its diversity, conflicts, and power imbalances?

They talk about basic community issues as per earlier LaPrairie papers, namely defining the community, representing the community, community participation and involvement, and also whether the community has the skills, and willingness to deal successfully with chronic offenders, as well as the occasional ones. If not, they argue, might such projects merely divert resources from other more effective community initiatives? They also raise questions concerning community justice roles (what is their transformative potential?), and the many levels of accountability of these projects and initiatives – accountability to the community, the victim etc., accountability of community leaders to the community concerning such projects, and accountability of funding sources to provide technical assistance and support to projects. The authors wonder also whether judges pay attention to a wide enough range of community voices in the sentencing circle format.

Law Reform Commission of Canada, Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice. Ottawa: Law Reform Commission of Canada, 1991

This important document called for the establishment of Aboriginal justice systems. The report stressed the merits of Aboriginal-controlled justice systems quite apart from the "political considerations" of self-government. While reaffirming its general position on the desirability of the criminal justice system imposing the same requirements on all members of society, the Commission held that Aboriginal persons have a 'different constitutional status' and therefore constitute an acceptable special case.

Linn, P. Report of the Saskatchewan Indian Justice Review Committee. Regina 1992

Linn, P. Report of the Saskatchewan Metis Justice Review Committee. Regina 1992

The two above reports deal with Aboriginal justice issues and concerns in Saskatchewan. The focus in both reports is explicitly short-term and oriented to community-based services. There are data, analyses, and recommendations especially in the areas of youth, policing, and

sentencing alternatives. Both reports are relatively short, about 100 pages, and contain a handful of appendices.

MacDonald, Roderick. "Recognizing and Legitimating Aboriginal Justice" in Aboriginal Peoples and the Justice System. Ottawa: Royal Commission on Aboriginal Peoples, 1993

The author deals with the larger question of legal pluralism in contrast with the present system of legal centralism or monism where adversarial adjudication is the dominant procedural model and the key to justice is "ensuring that everyone has an equal opportunity to set in motion the system which permits the designated 'official' actors to play their defined roles". MacDonald holds that reality is not congruent with the thrust of legal centralism, especially at the ideological level and in the administration of justice. He places Aboriginal alternatives in the context of legal pluralism and the development of mechanisms for addressing conflict in the socio-cultural frame from which it arises. In his view the most significant failures of the present system of justice are failures of recognition not failures of access; accordingly, acknowledgement of Aboriginal difference (i.e. recognition) can benefit Canadian society as a whole and especially disadvantaged segments within it.

Macklem, Patrick. "Aboriginal Peoples, Criminal Justice Initiatives and the Constitution" in U.B.C. Law Review, vol. 26, 1992

The author provides an interesting and clearly stated analysis of the constitutional bases for Aboriginal justice initiatives. His essential position is that the combined effect of s. 35(1) of the Constitution Act, 1982 and s. 25 of the Charter of Rights and Freedoms provide a strong basis for enabling "Aboriginal peoples to assume more responsibility for the administration of justice in Aboriginal communities across the country". S. 35(1) enshrined in the Constitution Aboriginal rights that existed at common law. The crucial issue with respect to s. 35, as seen in Supreme Court decisions such as R v Sparrow, is establishing that a practice, a specific form of social and political organization (such as unique arrangements with respect to criminal justice), that had not been extinguished by law prior to 1982 is indeed integral to the self definition of an Aboriginal community, and therefore can be defined as an existing Aboriginal right. Macklem gives the example that the role of the clan councils in the mediation of disputes involving wrongdoing in Iroquois society may well be integral to the self-definition of the Iroquois nation. Other sections of the Constitution Act, 1982, such as s.25 of the Charter (which shields Aboriginal rights from Charter scrutiny) provide legislative flexibility for initiatives that confer greater control over criminal justice onto Aboriginal communities and permit differential rights for Aboriginal peoples. In sum, Macklem argues persuasively that the current constitutional framework affords a great deal of scope for the enactment of laws that recognize Aboriginal difference in the realm of criminal justice.

McDonnell, Roger. "Prospects for Accountability in Canadian Aboriginal Justice Systems", in P. Stenning (ed.). Accountability for Criminal Justice: Selected Essays. Toronto: University of Toronto Press, 1995

This is an interesting, thoughtful essay on the prospects for accountability in Canada's evolving Aboriginal justice systems wherein the author draws primarily upon his own research among the Cree in Quebec. He contends that most Aboriginal justice initiatives have represented attempts to graft local institutional creations to mainstream justice procedures. In his view if alternatives are to be developed that are deemed by Aboriginal peoples as appropriately reflecting traditional culture for their particular communities, then there has to be more thought directed to questions of accountability, such as what standards to employ in assessing conduct, and what mechanisms should be available for ensuring compliance. The author identifies the two major challenges here as (a) community heterogeneity and diversity (traditionally, interdependent roles provided solidarity in a situation where no common law or set of regulations and constraints bound everyone equally), and (b) that band societies typically do not recognize any enduring authority at the level of the band (self-determination implying authoritative structures seems incongruent with band organization and appears to require conceptualizing bands as quasi-tribes).

Modern bands are administrative, governmental creations that bear little relationship to traditional bands but in the author's view the above challenges remain significant. Moreover he contends that there are radically different views in Aboriginal communities on what passes for 'our traditions' and often the populace feels that locals who would establish priorities and implement policies on their behalf are no less alien than the state agencies were. Aboriginal societies, in the author's view, are largely composed of people who simultaneously place value on both a mainstream 'civic tradition' (e.g. individuality, equality, impartiality) and on traditions (e.g. treating people differently by reference to age, gender, and kinship) contradictory to it. McDonnell allows that there may be much in the ethic of impartiality that is meaningless in contemporary Aboriginal societies, and much in the idea of the ageless, genderless, status-less abstraction of the individual that could be found objectionable. Still these pillar principles of the civic tradition are nowadays thoroughly enmeshed with Aboriginal traditions and it is often difficult to tell where one tradition leaves off and another begins. He sees an internal dialogue as required, and as emerging, in many Aboriginal communities, involving people from the many diverse sectors (youth, women, administrators, native spiritualists etc.) and notes that these 'community conversations' can lead to Aboriginal communities developing their own cultural possibilities within present organizational arrangements.

McEvoy, R. "Review of Bruce Clark's Native Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-Government" in Journal of Law and Society, vol. 7, 1992

McEvoy examines Clark's argument that the time for self-government has arrived and that there should be constitutional recognition of the entrenched right. The claim goes back to the royal proclamation of 1763. The right is deemed to be pertinent to civil more than criminal jurisdiction because of subsequent legislation in 1803 and 1821. McEvoy notes that the words used in the 1763 proclamation refer to possession, and not being molested or disturbed rather than to any right to self-government. As well it is noted that the right to self-government may not carry any federal obligation of financial support.

McNamara, Luke. "Aboriginal Justice Reform In Canada: Alternatives To State Control" in Perceptions of Justice. Winnipeg: Legal Research Institute, University of Manitoba, 1995

McNamara refers to the 1975 National Conference on Native Peoples sponsored by the Ministry of the Solicitor General Canada as the landmark conference setting the stage for Aboriginal justice reforms for the next 15 years. During those years more than 20 reports identified a similar 'top ten' list of recommendations, chiefly greater Aboriginal access to and participation in the criminal justice system, and more emphasis on cross-cultural training and crime prevention. It was an integrationist orientation though there was often a call for studying how self-determination might be achieved. Since 1990 there have increasingly been calls for a new direction, one where emphasis is given to the establishment of Aboriginal justice systems (e.g. Law Reform Commission of Canada, 1991; Report of the Aboriginal Justice Inquiry of Manitoba, 1991). Indeed in the 1990s the constitutional reform movement which would have provided a constitutional amendment recognizing the right of Aboriginal self-government, and which was backed by the government and the major political parties, was narrowly defeated in national referendum on the Charlottetown Accord. Regional self-government agreements have provided significant formal self-government within the existing constitutional framework. McNamara stresses the need for formal realization of the inherent right of Aboriginal self-government since "meaningful autonomy must include the right to define justice and to adopt and apply laws and processes consistent with this definition".

Merry, Sally Engle. Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans. Chicago: University of Chicago Press, 1990

This book provides a very interesting analysis of mediation in the United States. Merry discusses the mediation movement and the different system of discourse that characterizes it vis-à-vis the mainstream justice system. Her analysis focuses largely on the court-affiliated mediation system. She describes the complex nature of most incidents (often civil and criminal elements are thoroughly enmeshed) that get directed to mediation. In general, Merry contends that most complainants directed to this channel of redress prefer the mainstream justice route and want to end a relationship not reconstruct it. The bulk of mediation cases involve relatively ordinary if not disadvantaged women as complainants.

Merry, Sally and N. Milner (eds.). The Possibility of Popular Justice. Ann Arbor: University of Michigan Press, 1993

This is a collection of excellent essays on popular justice with an useful introduction by the co-editors.

Monture-Okanee and M.E. Turpel. "Aboriginal Peoples and Canadian Criminal Law: Rethinking Justice" in U.B.C. Law Review, vol. 26, 1992

These authors emphasize that in re-thinking justice for Aboriginal peoples it must be appreciated that there is no singular answer or Aboriginal system, but rather there are myriad possibilities

associated with the diversity of experience, geography, and culture of Canada's Aboriginal peoples. As Aboriginal communities develop ideas and initiatives about justice it is important, the authors argue, that these be treated with respect by non-Aboriginal peoples and the mainstream justice system. In their words "Justice requires a legally based commitment to cultural diversity and Aboriginal collective rights to determine our own destiny ... Justice must mean justice as understood by Aboriginal peoples and not only as conceptualized by non-Aboriginal Canadians".

Morse, Brad and Linda Lock. Native Offenders' Perception of the Criminal Justice System. Ottawa: Department of Justice, 1988

Murphy, C. and D. Clairmont. First Nations Police Officers Survey. Ottawa: Solicitor General Canada, 1996

This report deals with a nation-wide survey of police in Canada's Aboriginal communities. Over 60 percent of all front-line officers policing in these communities completed the survey. The police were attached to one of the five following organizational structures, namely RCMP, 'stand-alone' independent Aboriginal police services, OPP-affiliated Aboriginal police, SQ-affiliated Aboriginal police, and band constables. The objectives were to provide baseline data on field-level policing in Aboriginal communities, to compare the perceptions, values, concerns and policing styles of officers attached to the different organizational structures, and to analyse specific issues such as stress, job satisfaction, the impact of cultural values/identity and so on. In general the officers indicated a commitment to both conventional, reactive policing and to community-based policing, a modest level of job satisfaction, concern for further training of all sorts, and special problems dependent upon organizational attachment. The authors recommend a dual path of development, encompassing both conventional police craft and community-based policing and problem-solving.

Nahanee, T. "Dancing with a Gorilla: Aboriginal Women, Justice and the Charter" in Aboriginal Peoples and the Justice System. Ottawa: Royal Commission on Aboriginal Peoples, 1993

Nahanee addresses the basic requirements of a parallel Aboriginal justice system from a female perspective. She argues that two powerful driving forces which will shape Aboriginal criminal justice administration are: (1) the widespread victimization of women and children in Aboriginal communities, and (2) the 30-year struggle by Aboriginal women for sexual equality rights in Canada. She stresses that women have to be involved in the consultation process for a parallel Aboriginal justice system and points to their success in securing an unanimous ruling by the Federal Court of Appeal to that effect in 1992. She also cites the outrage Aboriginal women have expressed regarding the leniency of sentencing in cases of wife assault, sexual assault, and child abuse. Nahanee discusses the many reasons for under-reporting and denial by Aboriginal female victims: cultural considerations, fear of losing children, and control of service agencies by male leaders. She thrashes the so-called cultural defence occasionally used in court by Aboriginal males to excuse this kind of violence and is skeptical concerning restorative justice practices, such as the use of elders' circles, unless there is a genuine return to traditional ways

and a sharing of power between men and women. The traditional system, for many Aboriginal peoples, was not patriarchal.

Nahanee is very critical of both the federal and provincial governments' failure to clarify jurtisdictional issues that could ensure appropriate rights and living conditions. She directs much of the blame for the high level of victimization of Aboriginal women and children to colonialism and the residential school experience, to Christianity and its values, and to racism. In her view, progress will require clear federal initiatives and changes among the male leadership in Aboriginal communities. She notes that Aboriginal women have embraced individual rights found in the Canadian Charter because it aids their struggle for sexual equality and sexual freedom. The dominant Aboriginally-sensitive political theory has argued that soverenity would put Indian governments outside the reach of the Charter of Rights and Freedom. Allied with that position has been the male Aboriginal leadership's argument that Aboriginal governments must be established and recognized first, then sexual equality would follow. Nahanee contends that the Charter has "turned around [Aboriginal women's] hopeless struggle". Recent federal court decisions, as well as the defeat of the Charlottetown Accord, have flowed from the Charter and require that women must have a voice in determining whatever kind of criminal justice administration develops in Aboriginal communities.

Nielsen, Marianne. "Criminal Justice and Native Self-Government" in Robert Silverman and Marianne Nielsen (eds.). Aboriginal Peoples and Canadian Criminal Justice. Toronto: Butterworths. 1992

Here Nielsen discusses the characteristics of traditional Aboriginal justice (e.g. woven into society, flexible, situational, welfare and harmony of the group emphasized, etc.), most of which follows deductively from these traditional societies being small, economically interdependent kinship-based units, rather than from any empirical evidence. Using Black's categories she labels that traditional system's thrust as conciliatory more than penal, therapeutic, or compensatory; further, she argues it was a rational system featuring consensus and mediation rather than one dependent upon prayer, contests, and the like to effect justice. She thinks that much of this traditional justice is very appropriate in current and future society and is optimistic about its contribution to a new and better justice system. Still she does caution that Aboriginal values may have changed too much with modernization; that the basis of the traditional system, such as shaming, may be ineffective in the socially and geographically mobile, modern Aboriginal community; that community cohesion and deep value sharing may be problematic; and, finally, that there will undoubtedly be jurisdictional issues and conflicts between Aboriginal and mainstream justice systems.

Nielsen, Marianne. "Native Canadian Community Sentencing Panels: A Preliminary Report", paper presented at the American Society of Criminology Annual Meeting, Miami, 1994

Noting that new Aboriginal criminal justice initiatives are linked to self-determination and founded on the principles of community-level control and the incorporation of traditional

Aboriginal justice practices, Nielsen focuses on one such initiative namely youth justice committees (and their constituent sentencing panels), about 40 of which have been established in Alberta beginning in 1990. She used some participant observation, and both in-person and telephone interviewing of justice committee members, police, and Justice officials. Nielsen described the sentencing panels as "a committee of community members who assist a judge by making sentencing recommendations". The goals, according to her interviews, include increased community involvement, healing for all parties concerned, and reducing recidivism. Youth justice committees operating in this fashion are well within the rules and guidelines of the Young Offenders' Act. In 1994 the Alberta Department of Justice issued guidelines for such sentencing panels for both Aboriginal and non-Aboriginal communities. A limited number of communities have committees that have been formally sanctioned by the province, and where that is the case (i.e. formal provincial sanction) the province and police offer some developmental assistance.

Membership and recruitment vary, ranging from exclusively elders (i.e. members of the grandparent generation) to mixed ethnic, age, and gender groupings. All members are expected to be good role models, knowledgeable about community resources, comfortable with a consensus / mediation approach and, where Aboriginal, informed about traditional ways. Offender eligibility criteria vary but in all cases the offence cannot be serious assault. In the basic model the sentencing panel comes into play after the offender has been found guilty. The sentence panel is held in private, consensus reached, perhaps some reintegration occurs, if only hugs, and then a written recommendation is subsequently sent to the judge. As a variation of this basic model there may a pre-court diversion model (i.e. bypassing the court system), something favoured by many advocates as more efficient and more empowering to the community. Sentencing circles along the lines of those happening in the Yukon (see “R. v. Moses” below) were uncommon, if at all extant. The sentences in this Alberta program are non-incarceral and usually similar to community service orders, sometimes with an imaginative angle. The offender and his/her family must agree that the sentence is fair. The judge accepts the recommendations and, in fact, according to Nielsen, in the two cases taken to appeal because the judge did not, the recommendations of the sentencing panel were upheld.

Nielsen contrasts sentencing panels and the 'euro-based' system in the usual way, comparing their objectives, styles, and so forth. She discusses the myriad of factors contributing to or detracting from the legitimacy or acceptance of this new sentencing initiative. She raises the question why such a different process would be grafted upon the conventional mainstream one and even be so accepted by the latter's officials (e.g. police, judges) but she neglects to note here that such sentencing panels are consistent with YOA ideas and also meant to increase respect for the mainstream justice system, considerations which suggest compatibility and symbiosis between these initiatives and that justice system.

Nightingale, M. Just-Us' and Aboriginal Women. Unpublished paper. Ottawa: Department of Justice, 1994

Nuffield, Joan. Diversion Programs for Adults. Ottawa: Solicitor General Canada, 1997 (also available on Internet homepage @ www.sgc.gc.ca)

This report reviews evaluated programs to divert adult offenders from further involvement with the criminal justice system. The author focuses on those projects where the intention was to address offenders' risks and needs through program intervention. The review is organized in terms of the stage in the criminal process where the diversion occurs: pre-charge diversion, deferred prosecution, diversion at the sentencing stage, and post-incarceral programs. The author neglects evaluated diversion programs in Canada's Aboriginal communities, and makes up for the overall paucity of relevant Canadian material by referring extensively to American sources (as well as a few European program evaluations), and also to programs directed at youths.

In general, she concludes that the evaluations were inadequate in that they were overly descriptive of the process and provided little detail regarding implementation or effects. Control groups were seldom part of the evaluation design. In the pre-charge diversion programs (e.g. cautioning) the author found wide and unjustified disparities within and between offences and police forces; the treatments were seldom more than a lecture, and effects often were counter-productive. Deferred prosecution, where proceedings were suspended for a specific time pending the defendant's undertaking some kind of program (e.g. drug therapy, employment, etc.) and subsequently referred back to the prosecution for a decision whether to withdraw charges or proceed, was found to be widespread and sometimes effective. At the same time few cases were subject to deferred prosecution, and these were often cases that would have been dismissed or given a suspended sentence. The program intervention was frequently so short-term and modest that significant positive effects were unlikely. Diversion at the sentencing stage often took the form of alternate sentence planning programs where a client-specific plan was developed and submitted to the court. Insofar as the court accepted the plan, the offender usually received probation and of course was expected to follow the plan. Evaluations of the post-conviction diversion programs typically indicated a positive impact (e.g. less recidivism. less serious re-offending). The author refers to few adult post-incarceration programs, none of which received particularly positive evaluations.

The author concludes that if diversion is to be effective the specific program interventions will have to be better developed and more appropriate to offenders' risks and needs, and diversion will have to be utilized in more serious cases which justify more intensive treatment.

Oates, Maurice Jr. Dealing With Sexual Abuse In A Traditional Manner. Prince Rupert, B.C., unpublished manuscript, 1988

This monograph is written by an Aboriginal psychologist and focuses upon the active intervention of the community. It criticizes the way sexual abuse is now handled – the way it is reported, the procedures followed, the disposition rendered – as reflecting a legalistic approach. He argues for focusing on the harm that has been done and the best way to repair the damage. Emphasized are truthtelling, identifying the needs of all concerned, establishing forums for emotional release and as support groups, and developing means for repentance and reparation. The author argues that in Aboriginal culture no one was considered 'unchangeable', that deviance or 'crime' was deemed a situation where a person was 'out of balance', and that healing was effected in an holistic manner. He emphasizes dealing with sexual abuse within the extended family rather than through police, external agencies, etc. which is now the legally required way to proceed. He recommends what might be called a diversion program where the offender plus some supporter or ally meets with a trained Aboriginal sexual abuse coordinator and also with extended family members and/or elders. The offender has to accept full responsibility and cooperate or the case is referred to the conventional legal system. The conclusion of the alternative process, in his model, is a reparation feast. In effect what he describes is very similar to what nowadays is called family group conferencing.

The author lists some 17 features of the traditional process – disclosure, confrontation, protection, support groups, the extended family gathering, the ceremonials, the consensus solutions, etc. As he spells out these features, he allows for interaction with the formal justice system at various stages, and, in fact, calls for guidelines to be developed to determine what offences can be handled specifically in this traditional process. Again for the most part what is described is something similar to the Hollow Water model.

Phyne, John. "A Critique of the Panoptican Thesis", International Journal of Sociology and Social Policy, 12, 1992

Here there is the argument and evidence against the theory that alternative justice programs contribute to increased state surveillance (e.g. net-widening).

"R. v. Moses", 11 Crim. Rep. (4th) 357 (Yukon Terr Ct); also reprinted in the text Dimensions of Criminal Law, 1992

This is the classic case which has defined the circle sentencing principles and procedures in the Yukon. The offender, who had a long history of substance abuse, violent acts, and incarceration, had committed an assault with a bat on an officer, thieved, and breached probation. He was found guilty on these charges. The disposition was non-incarceral but multi-stage and involved family support, isolation, counselling, etc. Apparently the resort to the circle sentencing format was rather spontaneous, occasioned by many officials believing that the whole situation from a conventional justice-response perspective was self-defeating and likely to worsen things. A case is made for the circle's physical arrangements and the circle dynamics (e.g. speak while sitting, use personal names not titles, all persons within the circle must be

addressed, anyone in the circle may ask a direct question of anyone else there). The advantages of circle sentencing are claimed to include greater lay participation, creative new solutions, involving victims, extending the focus of the criminal justice system to look at the causes of crime, mobilizing community resources and partnership, and merging values between first nations and provincial and federal governments. This is a complex document which deals at depth with the issues raised by the inventive approach used to sentence an Aboriginal person.

Roberts, Julian and Carol LaPrairie. "Raising Some Questions About Sentencing Circles", Criminal Law Quarterly, 1997

The authors indicate that their focus is on the utility of sentencing circles to the non-Aboriginal culture, indicating that their application in Aboriginal culture raises other issues that go beyond the scope of the paper. At the same time, in assessing the utility of sentencing circles, they basically put forth criteria and then assemble evidence drawn almost exclusively from the Aboriginal experience since there is no other experience to draw upon. They contend that while extravagant claims have been made about Aboriginal sentencing circles in terms of reducing recidivism and crime, supporting evidence is non-existent. Further, they argue that Aboriginal sentencing circles have had a negligible impact on the reduction of incarceration, and in fact, Aboriginal incarcerations significantly increased in the Yukon Territories and Saskatchewan between 1990 and 1995 despite the large number of circles that took place in these two regions. They argue that sentencing circles run counter to the 'Just Deserts' theory of punishment (where punishment is proportional to the seriousness of the offence) since individual circumstances are emphasized, a fact that raises many questions for equity, a basic principle of Canadian sentencing policy. In their view sentencing circles, by representing a return to highly individualized sentences, could possibly be seen as a retrograde step. They call for rigorous examination of results to replace "anecdotal evidence" and "extravagant claims". Clearly, despite their disclaimers, this paper is a major critique of sentencing circles in Aboriginal communities. Perhaps, by their disclaimer, the authors are acknowledging that a complete assessment of sentencing circles in Aboriginal communities would also have to take into account their impact on community development and the extent to which they have fostered other goals such as collective responsibility, self-government, and so forth.

Ross, R. Dancing With a Ghost: Exploring Indian Reality. Markham: Octopus Publishing Group 1992

This book is based upon a provocative paper written by Ross in 1987 where he speculated upon his experiences with Aboriginal peoples in the justice system, discussing an Aboriginal 'way', a traditional ethos. Non-confrontation, avoidance of a show of emotion or being critical of others, use of parables rather than direct orders or statements, and so forth are components, he argues, of a different, Aboriginal cultural style. He explores the thesis that retention of this cultural style, this ethos, in the radically different modern societal context may be a major reason for present-day problems in Aboriginal communities. He suggests that individuals may not have "the tools" to deal with all the current critical turmoil that modernity has effected (e.g. the whole essence of community has changed), something which explains the necessity of an alternative

justice system that encourages people to 'open up the heart', that encourages healing and getting / restoring balance.

Ross, R. Duelling Paradigms: Western Criminal Justice Versus Aboriginal Community Healing. Ottawa: Aboriginal Justice Directorate, Department of Justice. 1993

Ross contrasts Aboriginal traditional justice practices and the mainstream justice system. He argues that insofar as there are to be Aboriginal alternatives, then these interventions should be Aboriginal-based, involving community control and healing principles, and focusing on serious familial and interpersonal violence which is a major problem in many reserves. He contrasts sharply this type of 'healing' intervention which he sees in the famous Hollow Water program, with initiatives on reserves such as Sandy Lake and Attawapiskat where the offences considered are modest and the program is basically an appendage to the regular court system, a case processing approach in his view. Ross compares these 'healing' and 'case processing' approaches on a variety of practical issues such as the successful involvement of elders. While calling for the former (i.e. the healing approach) as the major "intervention or alternative" strategy in Aboriginal society, Ross also refers to the need for (and participation of) trained and independent professionals or para-professionals who can command community support.

Ross, Rupert. Returning to the Teachings: Exploring Aboriginal Justice. Toronto: Penguin, 1996

This book continues Ross' insightful exploration of the Aboriginal ethos and perspectives on justice. It aims at filling a void in discussions of how Aboriginal perspectives may indeed be quite different from those underlying the mainstream system, and particularly suited to the chief social and justice problems facing Aboriginal peoples today.

Saskatchewan Justice. Sentencing Circles: A Discussion Paper. Regina: Policy, Planning and Evaluation, Department of Justice, Saskatchewan, 1993

This discussion paper addresses the use of sentencing circles in Saskatchewan, noting that there has been some such experience in the northern part of the province and that a major theme in Aboriginal justice has been making the sentencing process more relevant and appropriate for Aboriginal people. The paper suggests that the idea of a sentencing circle might itself be seen as the imposition of a foreign idea on Aboriginal people, as suggested by some scholars and observers who contend that the traditional system emphasized non-interference and avoided confrontation and allocation of responsibility. The paper notes that the idea of having a sentencing circle has, in practice, been deemed relevant only after a finding of guilt has been made, and has been advanced sometimes by judges and sometimes by others such as defence counsel. Review of court experience to date indicates that the purpose of sentencing circles is to shift to sentencing principles other than retribution, and to involve the victim and the community. Other factors affecting the issue of the appropriateness of utilizing sentencing circles include the seriousness of the offence (e.g. where the conventional sentence would be less than two years in prison), the willingness of offenders and the community to participate, the ability to involve the

victim directly or through representations, and the attitude (i.e. contriteness) of the offender. Clearly, each case would have to be decided on its merits and, as the authors note, one impact of this individualized approach may well be increasing disparity in sentencing, thereby raising the issue of equity.

The paper raises issues such as who is responsible for investigating the potential for the Circle, for handling its arrangements (the authors think there should be an objective service provider here), how does one identify 'the community', who should attend and what should their role be, what is the process to be followed in the actual sentencing circle (e.g. sitting arrangements, judge presiding, introductions, prosecution and defence sentencing submissions), whether the judge's final decision is seen as informed by the discussions or as directed by the group consensus, what if any rules apply with respect to perjury, slander, etc. Finally, the paper notes that for evaluation purposes, considerations include the resources required, and the impact on the victim, the community, and the offender. A prior consideration is agreement on the aims of sentencing circles.

Saskatoon Community Mediation Services. Restorative Justice: Four Community Models. Saskatoon: Department of Justice, 1995

This paper reports on a restorative justice conference held in Saskatoon in 1995. The purposes of the conference were "to listen to Aboriginal perspectives on restorative justice", to find out what interesting developments are occurring in different social contexts (Aboriginal, Australia, New Zealand, Japan), and to examine issues in victim-offender mediation. Several Aboriginal presenters expressed scepticism about the mainstream society's responsiveness to restorative justice. One Aboriginal person argued that healing and an holistic approach are central to the Aboriginal perspective, while a female presenter contended that Aboriginal women are pivotal to developments in the Aboriginal community – "if you see any Aboriginal justice project that doesn't centrally involve the women, then you're not looking at real justice". Sentencing circles were discussed by several presenters and generally seen as representing a positive step and considerable improvement over existing mainstream justice practices. One judge contended that "if you involve the community ... you open up the possibility of forgiveness and reconciliation so people can get on with their lives. In small communities this is absolutely critical". The Australian and New Zealand versions of family conferencing were also discussed. Successes were noted, as were Aboriginal influences and the parallels with Canadian Aboriginal sentencing circles. The Japanese system of restorative justice was seen as similar in many ways (e.g. an emphasis on harmony, healing, and the local community) to Aboriginal justice initiatives.

Sentencing Team, Crime and Public Policy Sector, Justice Canada. Intermediate Sanctions. Ottawa: Department of Justice, 1992

Here it is noted that Bill C-90 articulates the principle that "all available alternatives to imprisonment that are reasonable in the circumstances should be considered, particularly in relation to Aboriginal offenders". In reporting on the last round of consultation for this document the authors note that "there was general support to find ways to involve Aboriginal communities

in the sentencing process. There was concern that the current system has too many legal obstacles. It is important to bring criminal justice closer to Aboriginal communities".

Stuart, Barry. "Sentencing Circles: Purpose and Impact". National: The Canadian Bar Association Magazine, 1994

Stuart, a judge, has been credited with implementing the first modern-day sentencing circle in Canada. Here he emphasizes that such interventions, such as sentencing circles, can empower community members to resolve their own issues and, in that way, restore a sense of collective responsibility. Circle sentencing, in his view, "improves the capacity of communities to heal individuals and families and ultimately to prevent crime". It offers opportunities for all members to better understand the causes of crime and to work together to remove conditions fostering criminal behaviour. Stuart's approach is a pragmatic rather than a legal or a political position on Aboriginal systems of justice.

Stuart, Barry. Building Community Justice Partnerships: Community Peacemaking Circles. Ottawa: Department of Justice, Aboriginal Justice Learning Network, 1997

This is an interesting, detailed case for, and outline for initiating, community peacemaking circles, by a judge who has been one of the leading advocates and initiators of this justice system development in the Yukon Territory. Stuart focuses on community court circles which entail much community involvement, as opposed to sentencing circles which he defines as court-initiated courtroom circles. He discusses the principles of the circle process (especially distinctive is the focus on holistic healing), the participants (circles differ from the mainstream system in emphasizing equal opportunity and respect for all participants), and the operating philosophy ("community development is as central to the work of circles as community justice"). In discussing the maintenance of community justice initiatives that spawn circles, Stuart emphasizes the importance of a number of factors including community support, volunteers, and evaluation. In the latter case he stresses the importance of internal evaluations that get at the secondary impacts of community peacemaking circles (e.g. reduced interpersonal conflict).

Stuart makes it clear that community peacemaking circles are more than sporadic, spontaneous events occasioned by a particular judge. He stresses the essential role of a community justice committee which receives applications for circles and which channels cases to a variety of options. Also emphasized are key community roles such as 'keeper of the circle', the occupant of which has significant responsibilities for organizing the circle and guiding its implementation in a specific case. Pre-circle preparation is deemed to be very important for the success of community court circles as are training courses (for professionals as well as for volunteers) and public meetings. In a long chapter on the circle hearing he informs the reader as to issues of logistics, consensus building, and spirituality, and describes the hearing in terms of seven stages (e.g. opening the circle, legal steps, closing the circle). In an appendix to the text Stuart provides an example of such an initiated program from his Yukon experience.

Stuart contrasts the circle innovation with the mainstream system which he says "doesn't work". He is very positive about the circle initiatives, arguing that they produce reduced recidivism,

community development, and improved justice delivery. A number of "myths that act as barriers to community justice" are identified including the myth that only professionals can be effective, and the myth that such justice programming can only work in small, homogeneous communities. Throughout the monograph Stuart exudes humility and openness to alternative processes. He does appear somewhat more combative on the issue of evaluation and especially towards the media and academic researchers who, in his mind, are quick to disparage community justice on the basis of too narrowly conceived performance indicators such as recidivism.

Tavuchis, Nicholas. Mea Culpa: A Sociology of Apology and Reconciliation. Stanford University Press, California, 1991

Tavuchis provides an interesting and in-depth analysis of apology, a key dimension of restorative justice and often deemed a requisite to an offender's successful rehabilitation. He contends that apology is essentially a social exchange. It begins with "the knowing and wilful violation of a mutually binding norm that defines those affected as members of a moral community". In all societies there are socially patterned and objectified definitions of what constitutes an apologizable offense and how one is expected to speak to it. Apology can come in many modes, and the author discusses the "many to one", the "one to many", and the "many to many" modes. In Canadian society examples readily come to mind of all these forms (e.g. the "many to many" form is seen in the government's apology for the abuse of residential schools). Tavuchis describes these modes of apology largely in relation to Western civilization, but he does offer some contrasts with Japanese culture. He argues that there is a three-phase, universal dynamic to apology. First, there is the wrongdoer's responsiveness in terms of sorrow. Secondly, there is explicit acknowledgement by the offender which entails taking responsibility for the action, expressing sorrow, and seeking forgiveness from the offended party. Thirdly, the loop is closed by the forgiveness of the offended, which symbolizes reconciliation and allows the resumption of normal social relations.

Tavuchis stresses the humanizing and civilizing potential of apology for individuals and institutions. At the same time he observes that "there are acts in the moral spectrum that are beyond forgiveness, individual and collective actors apparently impervious to sorrow, and institutional imperatives that can effectively silence such speech". Apology, he holds, is a learned phenomenon and therefore it is important to ask in any society, "to what extent is an appreciation of the remedial aspects of apology cultivated in different social environments, such as family and peer groups". Clearly, it would be very appropriate to ask to what extent such cultivation of apology is a central dimension of justice processes in modern society.

Turpel, Mary Ellen. On The Question Of Adapting The Canadian Criminal Justice System For Aboriginal Peoples: Don't Fence Me In. National Round Table On Aboriginal Justice Issues, Royal Commission on Aboriginal Peoples, Ottawa, 1993

In this paper prepared for the National Roundtable on Aboriginal Justice Issues (Royal Commission on Aboriginal Peoples) Turpel discusses the general issue of whether the Canadian Criminal Justice System can be adapted for Aboriginal people. She emphasizes that there are differences in value-orientations, principles, and strategic directions between Aboriginal peoples

and their traditional systems on the one hand and the Canadian system on the other. At the same time she considers the impact of the destruction caused by colonialism and oppression, and also the diversity among Aboriginal peoples. She stresses differences between Aboriginal and mainstream systems that exist on a variety of fundamental Justice principles, and emphasizes the Aboriginal focus on harmony, healing, and consensus. She argues that dual respect of differences (and rights) should be the theme of future Justice considerations and collaboration, and holds that a single inclusive model will be problematic, especially outside urban areas.

Webber, Jeremy. "Individuality, Equality And Difference: Justification For A Parallel System Of Aboriginal Justice" in Aboriginal Peoples and the Justice System. Ottawa: Royal Commission on Aboriginal People, 1993

Webber deals with the moral and everyday rationalization for a parallel Aboriginal justice system vis-à-vis Canadian concerns for fairness, equity, commonness and so forth. He sees Aboriginal justice as a matter of roots, context, and identity. He deals with several possible objections to an autonomous Aboriginal system. In discussing concerns about the protection of individual liberty, Webber observes that undoubtedly there would be the possibility of opting-out, and the Charter of Rights and Freedom would protect certain rights. On another possible objection, namely the legitimacy of authority, Webber contends that concern would be about institution building at the community, band or First Nation level. and the question of whether Aboriginal societies lack the safeguards which non-Aboriginal Canadians consider important. Here he argues for a reinvention of tradition appropriate to the new societal Aboriginal circumstances which may, for example, require inventing checks to prevent abuse which were unnecessary hundreds of years ago. He contends that any Aboriginal system will have to pass some standards for effectiveness and lack of corruption. On equality and commonness, Webber notes that since some basic standards are essential to the continued cooperation of Aboriginal and non-Aboriginal peoples, there would need to be some consistency in minimal standards of conduct upheld by the criminal law or other means. Webber emphasizes that he is not suggesting that a completely separate Aboriginal justice system is essential or even desirable.

Zimmerman, Susan. "The Revolving Door of Despair: Aboriginal Involvement in the Criminal Justice System", U.B.C. Law Review, Vol. 26, 1992

This is a well-written, comprehensive overview of Aboriginal involvement in the Canadian Justice System. The author, affiliated with the Law Reform Commission of Canada at the time, carried out the study in conjunction with the Manitoba Inquiry on Justice and Aboriginal Peoples. She provides a brief factual description of Aboriginal involvement in the criminal justice system, along with some policy discussion and extensive recommendations, for each stage or level of the justice system, from policing to parole and aftercare. At each step it is clear that Aboriginal people are disadvantaged if not discriminated against. In general, the main thrust of the paper is advancing recommendations for a more equitable Canadian justice system for Aboriginal peoples, and the main theme is the call for more governmental funding (i.e. human, material, and program resources) and more Aboriginal control over and direction of these resources. The author acknowledges that such recommendations can be characterized as mere

"tinkering" and falling far short of "the aspiration of Aboriginal peoples to assert control over their lives and destinies", something she strongly supports as a long-run objective.

The paper represents well the conventional, progressive non-perspective on Aboriginal peoples and the Canadian justice system. But analyses are limited (e.g. what is the role of socio-economic status?) and few hard choices are made; for example, in referring to the debate over whether in corrections the emphasis should be on cross-cultural training of non-Aboriginal staff or the hiring of Aboriginal staff, the author's solution is "more of both". Moreover, the article could not take into account justice system developments of the 1990s including the development of diversion and of sentencing circles, as well as the indigenization and increasing Aboriginal administration of policing across Canada. Still, it is a fine article and two points in particular should be noted. The author observes that the responses of Aboriginal participants during the Law Reform Commission consultations emphasized the need for respect for Aboriginal values and customs, and for their having ownership of the system of laws which govern them. Additionally, she notes that community involvement (and by implication, community development in all respects) is central to the success of Aboriginal justice alternatives.

PART B

EVALUATIONS, MANUALS AND PROGRAMS

Aboriginal Corrections Policy Unit (eds.). Community Development & Research. Ottawa: Aboriginal Peoples Collection, Solicitor General Canada, 1995 (also available on Internet homepage@ www.sgc.gc.ca)

This monograph is the result of an intensive two-day session focused on community development and research in relation to justice issues in the broad sense and especially relating to Aboriginal corrections. The consultation was held in Ottawa August 25-26, 1994 under the auspices of the Aboriginal Corrections Policy Unit of the Solicitor General. The purpose was to assist in the preparation of a community development manual which Aboriginal people would find useful in furthering communities' effective and efficient initiation of justice and corrections projects. All phases, from resource mobilization to securing funding to having evaluations carried out, were considered. A number of Aboriginal communities were represented as were some of the more well-known Aboriginal justice projects (e.g. Hollow Water). There was much discussion of how research fits in, how it can be participatory, entail some community ownership, be a positive force for community development, and what should be in a protocol guiding the evaluative research.

Some basic themes of community development are detailed including developing a capacity to self-direct, integrating past and present customs and practices, and involving all members. The complexity and mutual requirements entailed in the government-community relationship were highlighted. The Community Action Pack (Health Canada) was deemed to be a useful kit for communities wanting to act on problems and refers to all aspects from running a meeting to evaluating results. There was much concern too about the lack of community involvement in developing research projects and new styles of research were called for such that participation and community empowerment results. There was consensus that research funding should include money for the development of proposals in order to respond to the Aboriginal view that money is available for research but not programs. A large section of the report is devoted to how a community might undertake a research project – reasons for the project, specific objectives, establishing a committee, informing the community, using consultants and outside resources, etc. There is a useful checklist for developing community projects and also a comprehensive list of funding sources (i.e. funding programs that might be accessed).

Aboriginal Corrections Policy Unit (eds.). The Four Circles of Hollow Water. Ottawa: Solicitor General Canada, 1997

See annotation in Part A.

Aboriginal Justice Directorate. National Inventory of Aboriginal Justice Programs, Projects and Research. Update. Ottawa: Department of Justice, 1992

This document provides a detailed listing of Aboriginal justice programs, projects and research as of 1992. It lists these more than 400 items by federal department (Justice, DIAND, Solicitor General, Other) and also by province and territory. In each instance there is specification of the delivery agency, the purpose of the project, its target groups, funding arrangement, contact person, and starting and completion dates. The projects cover the entire spectrum of justice

concerns from family violence, alternative measures for youth, to training for special constables. In addition there is an executive summary and useful updated socio-demographic and crime and corrections data for each province and territory as well as for Canada as a whole.

Aboriginal Legal Services of Toronto. Community Council Reports, Quarterly Reports, 1993-1995, Toronto

Aboriginal Legal Services consists of a courtworker program, an Aboriginal legal aid clinic, a training program for court workers, an inmate liaison program, and a diversion program. This latter intervention diverts adult Aboriginal offenders in Toronto before their cases get processed in court. The protocol established with the federal and provincial governments is quite broad excluding only the most serious offences and incidents of family violence. In most respects the program is quite similar to other major Aboriginal adult diversion programs (e.g. Indian Brook, Nova Scotia) in terms of protocol, selection of panel members, post-charge referral, format of the hearing, minimum involvement of victims, types of dispositions, budget level, and pivotal status of crown prosecutor. It differs in having a broader eligibility for offences, in its handling of cases where the disposition is not completed, in the pattern of offences dealt with (primarily theft, prostitution, and court offences), and in its aggressive advocacy and pursuits of cases for diversion. Extensive data are systematically compiled on the socio-demographic characteristics of clients, type of offences involved, dispositions rendered, completion rate, and recidivism. It has been one of the most successful Aboriginal adult diversion programs initiated in Canada.

Arnot, David. "Sentencing Circles Permit Community Healing". National: The Canadian Bar Association Magazine, 14, 1994

This paper presents a strong argument for Justice interventions such as sentencing circles which can both assist community healing (something rarely achieved under conventional sentencing practices) and restore a sense of ownership (and 'tradition') to Aboriginal peoples. Arnot holds that sentencing circles have fostered a revitalization and self-worth in the individuals who came before the circles and "revitalized a collective pride in Cree communities in the area".

B.C. Coalition For Safer Communities. An Elaboration Of Community Needs In Crime Prevention. Vancouver: The B.C. Coalition For Safer Communities, 1997

This report provides an overview of the concerns and needs, with respect to dealing with crime and related social problems, of a sample of communities across Canada. Focus groups were held (utilizing a common discussion guide) and relevant statistical information gathered for twenty one communities, three of which were first nation communities. Common themes that emerged included a desire for more detailed information on crime and social factors in local communities, the need for more resources to be designated for basic socio-economic development and conflict resolution, and the view that crime prevention should be seen in a much broader sense than is usually the case.

Bopp, Judie and Michael Bopp. Responding To Sexual Abuse: Developing A Community-Based Sexual Abuse Response Team In Aboriginal Communities. Ottawa: Solicitor General Canada, Aboriginal Peoples Collection - Technical Series, 1997

As the authors note, nowadays almost all Aboriginal communities are struggling with the issue of dealing with sexual abuse. It is an extensive and serious issue in Aboriginal society and one where Aboriginal peoples have been dissatisfied with the response provided by the mainstream justice system and, more importantly, with the approach and conceptualization of the issue in mainstream society. Increasingly, Aboriginal communities and Aboriginal professionals have favoured alternatives rooted more in communitarianism, restorative justice, and healing. New strategies such as community response teams and community wellness programs are also favoured. This manual has been written "to assist Aboriginal community sexual abuse response teams (CRTs) to develop ... strategies for addressing the issues of sexual abuse ... [introducing] the main issues and problems with which CRTs should be prepared to deal". The authors discuss the understanding of sexual abuse in First Nations communities, the community wellness approach, care for the caregivers, response to abuse at the time of disclosure, the development of a community response team, involvement of the community, and legal and administrative concerns. Resource information is provided on most topics and appendices include a basic workshop program geared to enable community teams "to engage the material in the manual", as well as an outline for a two-year sexual abuse worker training program.

The monograph presents a credible account of why sexual abuse became so prevalent in Aboriginal communities in the post-World War Two era. The authors trace the decline of clear traditional boundaries and rules regarding sexual conduct to the impact of colonization and its associated strategies and policies (e.g. residential schools). There is an interesting discussion of traditional values and traditional teachings on healing. The authors contend that over the past twenty years in particular an Aboriginal healing movement has emerged which has spawned the recent effective community-based approaches to the problem of sexual abuse. The movement has been fuelled by a re-awakening of traditional spirituality, cultural identity, and political action.

Among the highlights of this reference manual, perhaps the most important, are the discussions of how to develop community response teams and community wellness programs. The authors also provide a clear and thorough account of dealing with the critical first phases of responding to sexual abuse incidents (see At The Time Of Disclosure below). Throughout the monograph the authors are continuously differentiating and integrating Aboriginal and mainstream approaches and experiences in relation to sexual abuse and to justice issues in general. They are cautious in their arguments and in their advice to potential community practitioners. In other words, they appreciate the complexity of the issues and the need to balance the various considerations. They emphasize the importance of establishing protocols with the mainstream justice system and of attention to records and to details in general. A special aspect of the manual is the considerable attention given to caregivers, with tips to recognize and avoid stress and burn-out (a very real threat given the intensity and time-consuming nature of the caregiver role in small, densely-networked communities) and guidelines for their activities.

Overall, this is an excellent reference manual for front-line caregivers. Its historical and explanatory models may be somewhat simplistic but the authors are more interested here in facilitating community development than in advancing scholarship – though a careful reading would reward those who have that orientation. This reference manual is well-written, contains a host of interesting resource materials, good tips and useful procedural information, and succeeds in its objective "to inform anyone interested in working on the challenge of sexual abuse from a community-based platform about what is involved in mounting an effective community response".

Bopp, Judie and Michael Bopp. At The Time Of Disclosure: A Manual for Front-Line Community Workers Dealing with Sexual Abuse Disclosures in Aboriginal Communities. Ottawa: Solicitor General Canada, Aboriginal Peoples Collection - Technical Series, 1998

This manual is a by-product of the above, more broadly-focused manual prepared by the authors. The objective here is to focus upon the time of disclosure of sexual abuses in the community and to assist the front-line community workers in responding effectively to that situation. The authors reiterate their perspective on traditional Aboriginal societies and sexual abuse (e.g. that there were strongly held and widely shared norms against sexual abuse and little actual abuse) and the shattering of these normative systems and the effective community sanctioning as a result of colonization and its associated strategies and policies. They contend that the terrible state of abuse in Aboriginal communities in the post-World War Two era has begun to be dealt with as a result of the movements (i.e. spirituality, identity, healing) which have been impacting on Aboriginal communities since the 1980s. The authors argue that there is now a clear alternative to the approach followed in mainstream society, one that emphasizes restorative rather than retributive justice, and wellness rather than sickness. At the same time the authors acknowledge that both mainstream and Aboriginal approaches have to accommodate one another, and note that spirituality, healing and restorative justice have strong roots in the mainstream society. Accordingly, their manual draws heavily on both sources of literature for definitions, lessons learned, strategies to follow and so forth. Moreover, the authors, while emphasizing the Aboriginal approach and the achievements attained thus far in local communities, consistently show a sensitivity to the demands and requirements of the larger legal system and to the values of impartiality, professionalism and technical competence when dealing with sexual abuse.

The authors discuss what abuse is, why it is a serious problem, the patterns of abuse, signs of abuse, guidelines for intervention (especially when dealing with children) and the issues and needs of the various parties at the time of disclosure. These are all strikingly similar to what one would describe for mainstream society and indeed the literature cited here is largely non-Aboriginal. They also discuss why and how sexual abuse, and especially the response to sexual abuse, are different in Aboriginal societies. Here they highlight the pervasiveness of the problem, and the special challenges and opportunities presented by Aboriginal community life. The preferred model for response advanced in this reference manual calls for the establishment of a community-based response team and for the development of a community wellness program. The community response team includes representation from the legal and child protection

agencies and represents an integrated and coordinated response involving agents and perspective from both the local community and larger society. Particular attention is paid to the stress and burn-out that front-line caregivers and members of the community-based response team frequently experience. The authors also utilize available Aboriginal materials to highlight examples of community response teams, and prevention and healing programs that appear to have been successfully implemented in Aboriginal communities.

The manual should be seen in appropriate context. While the authors' premise that there is an increasingly pervasive and credible Aboriginal approach or justice movement is valid enough, it is still the case that few communities are actually implementing the extensive alternative systems described in the manual. Fewer still are the quality evaluations which examine the extent to which such intervention strategies as community response teams for sexual assault are equitable (fair to all community members), efficient (justify the considerable costs and community involvement required), and effective (achieve wellness for victims, offenders and the community). It is interesting that the chief source for most of the guidelines, signs of abuse, issues for the various parties and so forth is a non-Aboriginal handbook published in 1982 (i.e. Sgroi). It could be said that the development of a better, more Aboriginally-relevant system for dealing with sexual abuse is just beginning. This reference manual will certainly assist caregivers and front-line workers in advancing that development.

Burford, Gale and Joan Pennell. Family Group Decision-Making Project: Implementation Report Summary. St. John's Newfoundland: Institute of Social and Economic Research, Memorial University, 1996

This report deals with the application of the principles of New Zealand's family conferencing to cases of family violence, including some sexual abuse cases, in Newfoundland. As a pilot project the program was implemented in 1993 at three sites, Nain (the home of some 1200 Inuit), St. John's, and Port au Port Peninsula. The report answers numerous questions about the purpose, procedures, and impact of the initiative. The authors argue that the model is applicable across cultural boundaries providing there is high involvement of local people in adapting it to their use. The report deals with commonly raised questions about objectives and implementation (e.g. typical problems in setting up a family conference, dealing with the possibility of intimidation, costs, family assessments of the experience). The authors conclude that family group conferencing is an effective way to deal with violence and sexual abuse without discounting the seriousness of these problems.

Campbell, Jane and Associates. Evaluation of the Nishnawbe-Aski Legal Services Corporation. Toronto: Ontario Ministry of the Attorney General, 1994

Campbell, Jane and Associates. Justice Development Workers: Review and Recommendations. Ottawa: Justice Canada, Aboriginal Justice Directorate, 1995

This paper presents a basic bare-bones review of federal and provincial projects generating justice development workers in Aboriginal communities. Using a mailed questionnaire the views of seventeen justice development workers (variously called justice coordinators, facilitators,

researchers) were obtained. These data were supplemented by information from a few community managers and a handful of funding officials. The primary role of the justice worker in practice was seen to be serving as a bridge between the community and the external justice system, filling service gaps, more than doing community justice development. Major problems included the implications of short-term funding, and the lack of training for most workers. Still, a number of interesting initiatives were launched by the justice workers and they clearly found lots of useful justice activities to focus upon, usually stretching their initial mandates. Apparently, too, the communities supported and valued the projects as did the external justice officials. The report highlights the factors that have led to successful justice worker programs (e.g. community participation, formation of justice committees, good pre-implementation work, good communications to the community) and correspondingly, factors that were associated with the least successful programs (e.g. lack of clearly stated objectives, poor communication of the project's mandate and limits). The report also calls attention to the importance of in-service training, networking with the external justice system, and collaboration with other service providers in the community.

Campbell, Jane and Associates. Sentencing Circles – A Review. Ottawa: Justice Canada, Aboriginal Justice Directorate, 1995

This report provides a summary overview of how sentencing circles have operated in Canada, especially in the Yukon and Saskatchewan where these initiatives have been concentrated. The sentencing circle's key ingredients are considered to be a prior guilty plea or finding of guilt, and the assembly of justice system officials and community representatives along with the offender and the victim, to discuss and reach a consensus on the disposition of the case. In compiling the information the author depended upon interviews of participating judges and crown prosecutors, and a small number of available case files. After a brief discussion of reasons for the development of sentencing circles in the early 1990s (citing the 1992 case of "R. v. Moses" as path-breaking), there is reference to factors influencing a decision to hold a sentencing circle, factors such as the willingness of all participants, the type of offence, community readiness, and, especially, a willing judge who is the authoritative decision maker in virtually all aspects. Since the sentencing circles have no specific legislative basis it is not surprising that there is considerable variation in practical aspects (e.g. location of the circle, notification procedures, diversity of participants, pre-circle activities, and seating arrangements). Still, a style has been developing which incorporates some cultural traditions, is basically informal in dress and discussion, assembles core participants in a circle, and where consensus decisions are respected by the judge. Although little systematic evidence is presented on the impact of this phenomenon, the reported (by the interviewees) positive outcomes and community benefits are many – chiefly meaningful, direct offender, victim, and community involvement, the mobilization of community resources, and the merging of First Nation and Western values. The issues and concerns reported included the obvious diversity as regards selection of cases, community participation, legal considerations (e.g. legal status of statements made in the circle), and resource implications for communities and for the justice system.

Cawsey, R.A. Justice on Trial: Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta. Edmonton: Province of Alberta, 1991

The Cawsey Task Force issued three volumes, the main volume noted here, a summary volume, and a third one which contains working papers and bibliography. The Task Force received many submissions, made site visits, and collected relevant data. Its sections on policing, courts, corrections, and so forth are well developed with solid supporting evidence. This report shows that the Canadian-wide over-representation of Aboriginal peoples in the justice system, as offenders and incarcerates, applies in Alberta. The Task Force concludes that systemic discrimination exists within the criminal justice system, even when uniform policies are being applied. It advances some 340 recommendations, a third of which pertain to policing. One of the principal recommendations is the re-establishment of community control (as opposed to professional, bureaucratic control) in the criminal justice system. While sympathetic to the possibilities of an Aboriginal alternative to the conventional justice system, it focuses upon improving the present system and strengthening local community controls, explicitly leaving the issue of how autonomous Aboriginal justice might be to negotiations between Aboriginal leaders and the governments. Recommendations are advanced dealing for example with diversion, sentencing panels, Aboriginal justices of the peace, and the location of provincial criminal courts. Interesting presentations were provided the task force by various Aboriginal groups (e.g. the Blood Tribe analyzed over-representation from the perspective of colonization and also discussed its traditional concepts of justice).

Church Council on Justice and Corrections. Satisfying Justice. Ottawa: Church Council On Justice and Corrections, 1996

This book is a story-based compendium of some 100 justice initiatives that, for the authors, represent credible alternatives to prison and convey the spirit of restorative justice. Throughout, the emphasis is on successful initiatives that have promoted to varying degrees, the goals of reparation, victim and community involvement, reduced recourse to incarceration, and the de-professionalization of justice. Especially highlighted are recent developments, and successful alternatives to mainstream justice, in the Aboriginal community (e.g. circle sentencing, community healing programs, creative sentencing). In particular, there is a good, brief discussion of the Hollow Water project and of the emergence of circle sentencing 'north of sixty'. Also considered (via discussion and brief stories / examples) are 'family conferencing' models, diversion programs, mediation programs and other programs that effect reparation and/or reduce incarceration. Contact persons are given for virtually all projects discussed. Relevant initiatives from other societies are also presented. This is a well-written book that conveys effectively the possibilities of the restorative justice movement as well as the demands it makes on community resources. Justice initiatives are grouped by theme (e.g. Aboriginal people, youth, sexual offences) in the appendix.

Clairmont, Don. Shubenacadie Band Diversion Program: Analysis and Interim Evaluation. Halifax: Tripartite Forum on Native Justice, 1993

This monograph provides an interim assessment of the adult diversion intervention undertaken by the Shubenacadie Band in collaboration with the federal and provincial governments in 1992. Chapters are devoted to crime and social problems in the Indian Brook community, to the analyses of court records at the provincial criminal court, to the findings of community surveys of adults and youths dealing with their perceptions of community justice issues and their views on diversion and this specific project, and to the history of the diversion project to date. Concerning the latter, attention was paid to the objectives of the project and the extent to which they were being realized, the selection and training of panel members, the evolution of the diversion organization, the evolving protocol for cases and concurrent negotiations with Justice officials, the penetration rate for the project, the diversion procedures and ceremonies, and the impact on the various parties. The main conclusion was there had been significant institution building but that the penetration rate was low (i.e. few of the eligible cases went to diversion) and that the project was quite conventional in its procedures and dispositions. There was little victim-offender reconciliation and little community participation beyond the diversion organization itself.

Clairmont, Don. "Alternative Justice Issues For Aboriginal Justice" in Journal of Legal Pluralism and Unofficial Law, #36, 1996

See annotation in Part A.

Clairmont, Don. Shubenacadie Band Diversion Program: Final Report and Overall Assessment. Halifax: Tripartite Forum on Native Justice, 1996

This monograph provides an assessment of the last year of the Shubenacadie Band diversion project and then provides an overall assessment of the four year project. The last year was one of stress and uncertainty as the project limped to its end. The penetration rate of the project was disappointingly low and the return of cases to the provincial criminal court because of non-attendance or non-compliance was disappointingly high. While offenders, victims, and the community in general still supported the diversion concept, its implementation left much to be desired because there was little community involvement, an aura of secrecy, little networking with Justice officials, and a lack of morale associated with the organization's passivity (the style was to wait for cases to be referred by the Crown and not to pursue cases nor exhibit high visibility). In the second part of the monograph this project is discussed in the more general context of restorative justice and diversion strategies which were initiated throughout North America in the 1970s and 1980s (pre-family conferencing) and its similar "administrative justice" thrust (i.e. cases are handled by program staff rather than at open court or with much community participation) is highlighted.

Clairmont, Don. The Civilian Native Community Worker Project. Halifax: Tripartite Forum on Native Justice, 1996

This report deals with a quite successful police-based urban justice intervention wherein an Aboriginal person was hired as a civilian coordinator for Aboriginal cultural sensitivity training, liaison and other activities designed to improve police-Aboriginal relations in the city. A two-way path model was developed wherein Aboriginal people learned about the police culture and organization from police officers while officers were being exposed to Aboriginal life and justice concerns by Aboriginal presenters. The project was popular with police and Aboriginal persons, and subsequent to project termination the Aboriginal civilian worker was hired full-time by the Halifax Police Service to carry on and elaborate these activities.

Crynkovich, Mary. "A Sentencing Circle", Journal of Legal Pluralism and Unofficial Law, 36, 1996

This paper represents its author's observation of the first sentencing circle held in the Nunavik region of Quebec in the spring of 1993 (see also her *Report On A Sentencing Circle in Nunavik*. Ottawa: Department of Justice, 1994). The specific case dealt with wife battering and was the accused's fourth conviction for the same crime. The initiation of the circle was described as pragmatic with the judge asking the group assembled, "what are we going to do with this man." There was no explanation given about the idea of sentencing circles nor was anything said about their connection to Inuit customs, but the judge did mention that this practice (i.e. sentencing circles) was in use in the Yukon and was being employed in keeping with the recommendations of Inuit Justice Task Force. The organization of the sentencing circle appeared to have been "left to the day of the event" (e.g. sitting arrangements, participants). The judge indicated that everyone in the circle was equal but also stated that he was not obliged to follow the advice rendered by the circle members. The author observed that the circle discussions were low-keyed and focused on the accused with "virtually no discussion about the harm suffered by his wife, children and family relations because of his actions". Crynkovich recommended caution in the use of circle sentencing for cases of spousal assault, expressing concern for the victims and referring to the discriminatory nature of some Inuit traditions (e.g. elders might excuse wife abuse on the grounds that the woman has not been obedient to her husband, but Inuit women would not share this view). Further she argued that more discussion should be required concerning what cases go through the circle, and that the community – which knows best what its resources are – should have a say in that matter.

Edmonton Police Service. Family Group Conference – 7 November 1996

Here there is a brief discussion of one particular family group conference involving a school and an Aboriginal youth, conducted by the Edmonton Police Service where all participants were pleased with the process and the results to-date.

Edwards, Bob. "A Risky Experiment: Lawyers Criticize Circle Sentencing", British Columbia Report, August 31, 1992

This is an interesting, brief account of a court case where the presiding judge decided to utilize a circle sentencing format subsequent to a non-native, physically and mentally disabled teenager pleading guilty to 'assault with a weapon' against another non-native at school. The judge contended that the justice system too often had failed offenders and he did not want to incarcerate the youth so, despite the objections of the defence attorney, he was going to borrow from Aboriginal practice and use a sentencing circle. Circle sentencing procedures were followed and several Aboriginal persons experienced in the procedures were involved as advisors. While the sentence rendered was not controversial, both crown prosecutor and defence attorney were critical of the judge's initiative, arguing chiefly that procedural safeguards were lacking in that no record was kept of the circle discussions, no cross-examination was allowed, and the bases for opinions offered there were unexamined.

Ellis, D. and D. Beaver. The Effects of Formal-Legal and Traditional Interventions on Woman Abuse in a First Nations Community. A Report Prepared for Health and Welfare Canada. Toronto: The LaMarsh Research Programme, York University, 1993.

Federal-Provincial-Territorial Working Group. Step by Step: Evaluating Your Community Crime Prevention Efforts. Ottawa: The National Crime Prevention Council of Canada, 1997 (also available on Internet homepage www.crime-prevention.org/ncpc/strategy/s-by-s)

This manual builds upon the work produced by Prairie Research Associates, Building A Safer Canada, which provides a model for problem-solving, crime prevention efforts at the community level. Here there is a short review of the four phases of the model and the major steps to follow in carrying out each phase. This manual then proceeds to elaborate upon the phase, "Monitoring and Evaluating Your Program", providing nine steps to follow, from "getting started" to "implementing the evaluation plan". This is a useful complement to Building A Safer Canada, in that it is directed at probably the most significant shortcomings in community justice initiatives, namely ensuring that the initiative is implemented as planned, and assessing whether it has achieved the desirable objectives. Appendices provide information on funding sources, sample instruments, and where to obtain further help.

Green, Gordon. "Community Sentencing and Mediation in Aboriginal Communities". Manitoba Law Journal, 1998

See annotation in Part A.

Hamilton, A.C. and C.M. Sinclair. The Justice System and Aboriginal People: Report of the Aboriginal Justice Inquiry of Manitoba Volume 1. Winnipeg: The Queen's Printer, 1991

See annotation in Part A.

Hickman, A. Report of the Royal Commission on the Donald Marshall Jr. Prosecution. Halifax: Province of Nova Scotia, 1989

See annotation in Part A.

Howley, Brendan. "In From the Cold" in Enroute, September 1992

This is a short journalistic description of the diversion initiative in Attawapiskat Ontario.

Lajeunesse, Thérèse & Associates. Community Holistic Circle Healing, Hollow Water First Nation. Ottawa: Solicitor General Canada, Aboriginal Peoples Collection, 1993

This report discusses the preliminary stages of one of the more famous Aboriginal justice interventions in Canada namely Community Holistic Circle Healing in Hollow Water and neighbouring Metis communities. The short description notes that the project's seeds go back to 1984 when a group of persons began to meet to discuss the problem on the reserve. Their dissatisfaction with the way the mainstream justice system dealt with their people led them to develop a more holistic, healing, community-based programme for sexual abuse conveyed in a "13 Steps" model which begins with "Disclosure", may go on to "A Special Gathering" and, some two years later, may conclude with "The Cleansing Ceremony".

This report dealt with the early stages of the program and consequently provides limited information about the implementation and operation of CHCH. The author contended that it has resulted in more victim disclosure and that the program leaders did not encourage incarceration for offenders who acknowledged their guilt.

LaPrairie, Carol. Exploring The Boundaries of Justice: Aboriginal Justice In The Yukon. Report to the Department of Justice, Yukon Territorial Government, First Nations, Yukon Territory, Justice Canada, 1992

Here the author makes a strong case for community justice development which can provide community-based alternatives to formal criminal justice processing described as "not working" and out-of-sync with the disruption and disorder problems with which it is involved. She advances the view that the varied community conditions, small widely-scattered population, Aboriginal and non-Aboriginal mixing, and political-constitutional context of the Yukon make it an appropriate site for comprehensive justice programming where approaches and programs can be implemented, evaluated, and subsequently exported to other jurisdictions. After identifying the major partners, namely First Nations, Yukon Territorial Government and Justice Canada, and discussing the crime and correctional data along with extant Justice programming (e.g. native courtworker program, circle sentencing, police diversion), the author examines the justice activities and interests of First Nations in the Yukon. Virtually all these bands have significant aspirations in the justice field.

LaPrairie notes that the pattern of repeat offenders, problem families, and the ostracized can be found in virtually all the communities. Also, the role of the elder while significant in Aboriginal justice discourse is problematic in practice. Community resources required for justice interventions are scant and most previous justice projects have been introduced piece-meal, with little pre-implementation work, little community participation, and minimal monitoring and evaluation. As a result there has been little sense of any incremental development. She contends that advocates may be seriously underestimating the complexities of introducing viable justice alternatives. LaPrairie spells out a strategy for community justice development stressing information needs/dissemination activities, research and evaluation, and identifying possible projects and specific research questions.

LaPrairie Carol. Evaluating Aboriginal Justice Projects. Ottawa: Department of Justice, 1994

LaPrairie discusses the context for evaluation, including what she perceives as the overemphasis on Aboriginal culture at the expense of socio-economic status and heterogeneity, the dominance of funding definitions in communities' redefinition of their problems, the type of justice problems typically extant (e.g. interpersonal violence, a small group of chronic offenders), and the lack of a knowledge basis to properly guide funding decisions. In particular she stresses the under-funding of off-reserve justice strategies and the limitation of isolating an Aboriginal strategy in a multicultural urban context. She dwells on the relation between justice structures and community development, and while aware that the former could be part of the latter's emergence, she cautions against an emphasis on new complex justice structures. In her view emphasis should be on whether new justice approaches stimulate institution-building or an environment conducive to community development and, correlatively, whether there is a building of bridges with mainstream institutions and regional Aboriginal structures. She recognizes that many initiatives have an important symbolic function, but holds that that value must be transcended if Aboriginal justice concerns are to be met.

Turning to substantive areas, LaPrairie found, based on interviews with representatives from those largely governmental bodies with Aboriginal justice functions, that these officials could articulate the most serious criminal justice system problems facing Aboriginal people and communities and could indicate their policy priorities and how these are reflected in programs and projects. At the same time, they had little systematic information on the actual programs and projects, depending basically upon informal "lessons learned". As regards these lessons, LaPrairie listed the following: the need to consult with a representative sample of community members and not just a select elite (i.e. Community Consultation); the need for community justice structures such as sentencing circles, diversion, and community courts, and evaluating whether these achieved their objectives, the type of offenders and offences they are suited for, and their impact on recidivism and rehabilitation, on victims, cost effectiveness, political independence, and equity (i.e. Community Justice Structures); the need to evaluate treatments in terms of cultural sensitivity, effectiveness, and efficiency (i.e. Community Treatments); the need to assess access to justice, and the role of culture in Corrections (e.g. does getting in touch with Aboriginal traditions make a difference, and, if so, how?); the need to evaluate first nations

policing arrangements; the need to determine community readiness for projects, including how people are selected and trained to deliver new services (i.e. Community Capacity).

LaPrairie, Carol. Seeking Change: Justice Development In LaLoche, Saskatchewan. Ottawa: Department of Justice, 1997

This report is a short case study of crime, criminal justice processing, and justice developments in a northern non-primary resource Dene community in Saskatchewan. Laloche has a very high crime rate which generates a high rate of incarceration. The chief offenders are young male adults, ill-educated, underemployed, and prone to recidivism and to a high level of court-related offences (e.g. fail to appear, breach of probation) and person offences. The author examines justice developments including the umbrella Community Development Corporation, the Community Justice Development Worker, and Alternative Measures, and makes recommendations for both these latter initiatives. She also stresses the need for greater collaboration between the criminal justice system and the community as well as between the police and the community.

In discussing this troubled and welfare-dependent community the author reports on the decline of community and communitarianism that presumably have accompanied material improvements and other facets of modernity, but she is careful to delineate both community strengths and the factors conducive to crime and disorder. LaPrairie emphasizes that the community's informal mechanisms of social control and dispute resolution are quite weak and there tends to be a lack of communication, apathy, and a small volunteer base for boards and other community activities. There is a great dependence on the police (RCMP) "for a huge variety of things" and the police in this busy detachment have not initiated formal cautioning or diversion programs nor become involved in activities such as the Aboriginal Shield Program for schools. The author identified the special crime problem as young male adults who are repeat and chronic offenders, and their marginalized families.

LaPrairie describes the LaLoche Community Development Corporation (CDC) as heavily engaged in justice-related initiatives but suffering from the common problem of attempting too many things at one time. One of its projects is the justice development worker program but there is ambiguity in it concerning mission, direction, and accountability. Similarly, there is a lack of networking on the part of the CDC and/or justice worker with officials of the criminal justice system who expressed both a willingness to become involved and a surprise about the lack of contact. LaPrairie suggests a need for a communications strategy, and, as noted above, also advances recommendations to improve the two main justice initiatives, namely the justice worker program and alternative measures.

Linn, P. Report of the Saskatchewan Indian Justice Review Committee. Regina 1992

See annotation in Part A.

Linn, P. Report of the Saskatchewan Metis Justice Review Committee. Regina 1992

See annotation in Part A.

Martens, Tony, Brenda Daily and Maggie Hodgson. The Spirit Weeps: Characteristics & Dynamics of Incest and Child Abuse With A Native Perspective. Edmonton: Nechi Institute, 1988

This is an oft-cited monograph on child sexual abuse and general issues of abuse and healing potential in Aboriginal communities.

Moyer, Sharon and Lee Axon. An Implementation Evaluation of the Native Community Council Project of the Aboriginal Legal Services of Toronto. Toronto: Ontario Ministry of the Attorney General, 1993

This is a comprehensive evaluation of the adult diversion project implemented by Aboriginal Legal Services of Toronto in 1991. Evaluators reviewed documentation, conducted interviews with a wide range of appropriate role players (including outside officials), and sat in on hearings for four different clients. The objectives of the project are specified. The process of selection and hearing procedures are described. Interestingly, the members of the diversion hearing councils, while Aboriginal, are not elders as initially planned for, but rather, as in such programs in the larger society, are primarily active and economically successful people between the ages of 35 and 55. The evaluators suggest that the project has been well implemented, is efficient, and has maintained good relations with outside Justice officials. Project clients viewed their diversion experience in a very favourable light. Other role players were also positive. Overall the project is deemed quite successful in relation to its objectives but evaluators note that it has been somewhat under-utilized, that there is too little monitoring of non-compliance, and that there has been little formal client needs assessment. They also suggest that there be a developmental phase for all future Aboriginal justice projects, especially perhaps for projects in urban contexts.

Nechi Institute and KAS Corporation Ltd. Healing, Spirit and Recovery - Factors Associated with Successful Integration. Ottawa: Solicitor General Canada, Aboriginal Peoples Collections, 1995

This report looks at "successes ... Aboriginal people who have made a better life for themselves and their families after being incarcerated". It provides brief case-studies of twenty Aboriginal persons who have made the transition from incarcerate (often a multiple incarcerate) to employed, law-abiding citizen. For all the participants, getting into trouble was associated with extensive use of alcohol or drugs or both. "Getting in touch with one own's spirituality was identified as a key to recovery by all the participants." The desire to change their criminal lifestyle was juxtaposed with a developing awareness of their Aboriginal culture and spirituality. They found a new way of life which empowered them with a sense of direction, valued their culture and provided a way of relating positively to others. This new way of life took time and was the culmination of an holistic approach to healing. All participants were known to the staff at an Aboriginal healing institute so more research is required to establish how pervasive their experience is among successful ex-inmates. The report calls for a more holistic approach to

correctional programming and the continuing availability of Aboriginal spiritual programs and representatives in correctional settings.

Nielsen, Marianne. "Native Canadian Community Sentencing Panels: A Preliminary Report", paper presented at the American Society of Criminology Annual Meeting, Miami, 1994

See annotation in Part A.

Nuffield, Joan. Diversion Programs for Adults. Ottawa: Solicitor General Canada. 1997 (also available on Internet homepage @ www.sgc.gc.ca)

See annotation in Part A.

Obonsawin-Irwin Consulting Inc. An Evaluation of the Sandy Lake First Nation Justice Pilot Project. Ottawa: Department of Justice, 1992

The Sandy Lake adult diversion project began in 1990 with the swearing in of an elders' justice council which would sit with the judge and the justice of peace to assist in the adjudicating and sentencing process. This evaluation was based solely on interviews with a wide range of role players but neither files nor data were accessed. Project documentation identified the objectives as increasing self-determination and community involvement while reducing offences and incarcerations. By far the most frequent offence involved the misuse of intoxicants. Both the elders and the project coordinator were paid. The elders apparently received little training. Accused persons, community leaders, and outside officials were generally satisfied that the intervention represented an improvement over the extant justice system. While it is argued that objectives were being met a number of recommendations were made including greater development of the healing and the preventive / educative approaches, and of conflict of interest guidelines. Clearly this project dealt only with minor offences and while there was community involvement through the elders it was not clear whether an alternative philosophy was in operation. Transition problems occasioned by new band elections and conflict over the role of elders have seriously limited this project.

Obonsawin-Irwin Consulting Inc. An Evaluation of the Attawapiskat First Nation Justice Pilot. Ottawa: Department of Justice, 1992

The Attawapiskat adult diversion project was similar to that of Sandy Lake in many respects (e.g. objectives, elders sit with judges, pay and budget, post-charge diversion, clients were mostly young men, participation of offender was voluntary, misuse of intoxicants was the chief offence, similar dispositions were rendered, the coordinator acted like a court clerk) but was different in that elders handled some minor offences (i.e. band bylaws) on their own. There was significant satisfaction with the project on the part of the offenders but victims and community leaders were often ambivalent, especially arguing that some serious sexual assault cases were inappropriately diverted to not sufficiently well-trained elders. Friction developed between Council and the project. The project coordinator had to act as probation monitor since

Correctional Services had no jurisdiction in diverted cases. The evaluators recommended that the project be scaled back in scope pending a review of the project's mission, operational philosophy and objectives, something they said should be done with significant community involvement. They also recommended criteria and guidelines for the selection of members to, and the operation of, the elders' council. This project was in a state of limbo after two years of operations.

Osnaburgh-Windigo Tribal Council Justice Review Committee. Tay Bwa Win: Truth, Justice and First Nations. Report prepared for the Ontario Attorney General and Solicitor General, Toronto, 1990

This report discusses the administration of justice in the context of the larger issues of economic development, language, education, and health. The Committee advances many specific recommendations, some forty-three in total, covering topics from housing to the conducting of inquests, but its report is most noteworthy for locating justice issues facing Aboriginal people in the wider context of colonialism; "any attempt to reform the justice system must address this central fact: the continuing subjugation of First Nations people". Consistent with that emphasis, the Committee stresses that justice reforms have to be placed in the context of a wider agenda of re-establishing Aboriginal communities as healthy, strong, and vibrant. Economically viable land bases and powers of self-government, including the power to develop Aboriginal justice systems, are deemed to be required. The authors "feel that our Report confirms [that First Nations must have recognition of their right to control important aspects of their lives which must include control of the criminal justice system on their reserves and in their communities]".

Pennell, Joan and Gale Burford. "Widening the Circle: Family Group Decision-Making" in Journal of Child and Youth Care. 9 (1), 1994

One of the Newfoundland communities where the family was brought into the corrections' treatment process was an Aboriginal community (see Burford et al, above).

Prairie Research Associates. Building A Safer Canada: A Community-based Crime Prevention Manual. Ottawa: Department of Justice, 1996

This manual, produced for Justice Canada, provides a model for community-based crime prevention which adopts a problem-solving perspective. It outlines four phases, namely identifying and describing problems, developing an action plan, implementing the action plan, and monitoring and evaluating the program. For each phase the authors specify steps to follow and suggest strategies and possible solutions for advancing the objective of 'a safer community'. This 'bare bones' manual could be adapted for Aboriginal communities by contextualizing the model with reference to the special Aboriginal circumstances, experiences to date, sources of expertise and support, and funding possibilities.

"*R. v. Moses*", 11 Crim. Rep. (4th) 357 (Yukon Terr Ct), also reprinted in the text Dimensions of Criminal Law, 1992

See annotation in Part A.

Saskatchewan Justice. Sentencing Circles: A Discussion Paper. Regina: Policy, Planning and Evaluation, Department of Justice, Saskatchewan, 1993

See annotation in Part A.

Saunders, Lauren. First Nations Police Governing Authorities: A 'How To' Manual. Ottawa: Solicitor General Canada, 1995

The author discusses four areas, namely structure, roles and responsibilities, operating procedures and identifying and meeting community needs. Concerning structure, the author refers to issues such as the size of the board, the selection of its members, the establishment of specific subcommittees, and the role and term of the chairperson and other appointees. Regarding policies and procedures, the author talks of clarifying goals and objectives with the aid of a mission statement, a strategic plan, developing policies, and doing periodic reviews. Spelling out procedures for the hiring, training and accountability of personnel is also stressed. Operating procedures are, of course, crucial to detail and, in this regard, the author deals with issues of frequency of meetings, conflict of interest guidelines, and achievement of non-politicization. The final section deals with identifying and meeting community needs; here, both formal (council meetings, interagency meetings, media reports) and informal (open door policy) methods are discussed.

Schrimi, Ron. Community Development Project: Final Report. Prince Albert Saskatchewan: Prairie Justice Research, 1992

This report evaluates recent community initiatives undertaken by Correctional Services of Canada (CSC), primarily the utilization of a community development officer to develop community linkages and resources for offenders either released or on day parole. It is interesting for two major reasons: one, that the Community Development Officer was found to spend far too much time and energy on administrative rather than community development matters, and, two, that the author emphasizes that there is a need for CSC to have an orientation to local communities which invites a larger role for them, one that is empowering and has input into correctional policies and practices.

Solicitor General Canada. Model Protocol for Evaluation of First Nations Police Service. Ottawa: Solicitor General Canada, unpublished, 1997

Here objectives are developed, areas to be examined specified, and suggested methods advanced. Subsequently, a number of research questions and associated recommended methods are detailed for each of the nine specified areas, namely operations, governance, management, personnel, morale, compliance, impact of the local environment, and adequacy of resources.

Sparwood B.C. RCMP Detachment. Sparwood Youth Assistance Program, 1995

Enclosed there is a brief statement of the protocol and procedures for a youth family conferencing program utilized by RCMP in Sparwood B.C. Copies of the information sheet, consent forms, RCMP undertaking regarding evidence, the disposition agreement, and victim evaluation form are included.

Statistics Canada. Criminal Justice Indicators. Ottawa: Statistics Canada, 1997

Here indicators are set forth in order to monitor the state of the criminal justice system in Canada. Three types of indicators are specified, namely workload (measures of activity), performance, (measures of efficiency and effectiveness) and environment (e.g. poverty levels, availability of shelters for battered women etc.). Regarding performance measures, the report situates these in the context of five commonly cited goals of the criminal justice system. Clearly there could be much overlap with respect to the monitoring of Aboriginal justice systems.

Stuart, Barry. Building Community Justice Partnerships: Community Peacemaking Circles. Ottawa: Aboriginal Justice Learning Network, Department of Justice, 1997

See annotation in Part A.

Williams-Louttit, Pennie. BIIDAABAN; The Mnjikaning Community Healing Model. Second Edition. Mnjikaning Ontario, 1996

This document describes the model developed by this First Nation to deal with the problems of sexual abuse. Basically, it adheres to the principles and procedures developed in the Hollow Water Circle Healing model. The Biidaaban Circle has been accepting families for healing since the summer of 1996 although the program has yet to be fully implemented. The program was a response to concern about "the degree of child sexual abuse in the community and the hidden nature of this problem". A core group of sixteen persons who constituted the circle received training (some 13 full days) and also prepared the manual. The model described aims at "healing the person who has abused, the person who has been abused, the spouse of the abuser, the family and the entire community". In the model there is a Biidaaban coordinator, a disclosure team (including the coordinator, the police, crown attorney, and a representative from family services), and a validation team (including the disclosure team plus a justice of the peace and all Circle members); specific Circle members provide support for the various parties. According to the proposed model, when all parties have been "prepared" there is a Special Gathering where a Healing Contract is generated, and the completion of the latter (anticipated to be usually at least two years after the Special Gathering) is to result in a Cleansing Ceremony.

Wiseman, Marie. Smart Policing: Faust Detachment, 'K' Division. Ottawa: Aboriginal Policing Services, 1996

This report discusses RCMP policing in a largely Aboriginal detachment area where the RCMP are doing community-based policing, community revitalization work, and much varied problem

solving. The RCMP is working there on establishing a family conferencing program as an possible option to the formal criminal justice system in some instances.

PART C

OTHER MATERIALS

There is an extensive and growing literature of academic studies and program descriptions and evaluations in the field of restorative justice. For all the major new strategies such as family group conferencing and sentencing circles there are descriptions, 'how to' manuals, and evaluations. The literature cited above can be gleaned for further references. There is also copious material on special Aboriginal justice areas such as the native courtworker program (see Clairmont, 1992 and Campbell, 1995 above).

The Aboriginal Peoples Collection published by the Aboriginal Corrections Policy Unit contains a wealth of related materials. A copy of the list of available publications may be obtained by writing to:

Aboriginal Corrections Policy Unit
Solicitor General Canada
340 Laurier Avenue West
Ottawa, ON K1A 0P8
Phone: (613) 991-2846
Fax: (613) 990-8295
E-mail: bullere@sgc.gc.ca

Many Aboriginal justice initiatives will entail the collaboration if not the leadership of the police. Three publications available through the library of the Solicitor General Canada may be helpful in understanding the role of policing in Aboriginal communities today. They are Social Policy Research Associates, National Evaluation Overview of Indian Policing, 1983; Jamieson, Beals and Lalonde Associates, Evaluation of the First Nations Policing Policy and Program, Volumes 1 and 2, 1995; Murphy and Clairmont, First Nations Police Officers Survey, 1996.

In addition to print there are many video productions now available dealing with Aboriginal justice issues as well as with restorative justice projects or ideas in general. Some of the better ones are Cardinal, Gill, National Film Board, The Spirit Within, 1990 which deals with inmates' search for culture and spirituality; Obomsawin, Alanis, National Film Board, Poundmaker's Lodge, 1987; Aboriginal Justice: A Time For Action, Royal Commission on Aboriginal Peoples, 1993; The Making of Rage, Native Counselling Services of Alberta, 1995; Youth Justice Committees, Native Counselling Services of Alberta, 1996; Sentencing Circles, Vision TV, Northern Native Broadcasting, 1997; First Nation Blue: Policing in Aboriginal Communities. Ontario TV, 1996; Restoring Justice, National Council of Churches of Christ in the USA, 1996. Two sources of useful videos on Aboriginal youth, young offenders, and the circle of life are Magic Lantern Communications Ltd and Why Not Productions. The Aboriginal Corrections Policy Unit, Solicitor General Canada, in addition to supporting Rage, a documentary four-part video series on Aboriginal male inmates caught up in the cycle of violence, has supported several videos on Aboriginal female inmates (Getting Out, and To Heal The Spirit, both produced by Why Not Productions), and on post-incarceral rehabilitation (Drum Song, and Healing The Spirit). The National Film Board will soon be releasing a film about Community Holistic Circle Healing in Hollow Water and The Nitinaht Chronicles, a film about a community dealing with sexual abuse.

Another recent initiative has been the opening of the Centre for Municipal-Aboriginal Relations in January 1997 to facilitate collaboration and effective relations between municipal and First Nations governments and Aboriginal communities. A 'best-practices' literature review concerning municipal-Aboriginal relations has been produced. For some, if not many, Aboriginal communities efficient a
nd effective justice initiatives could well entail collaboration with surrounding municipal governments; of course this is especially true for Aboriginal communities in urban contexts.

THEMES FROM THE LITERATURE

1. Need to prepare for the implementation of the project

Developing new justice initiatives requires time, planning, community collaboration and resources. Where there has been little pre-implementation development work Aboriginal justice programs have often been less successful than hoped for (e.g, the Shubenacadie Band Diversion Program, South Vancouver Island program, diversion programs in Sandy Lake and Attawapiskat). On the other hand where much effort was expended on activities such as community preparedness, spelling out objectives and procedures and clarifying accountability, the programs have usually fared well (e.g, self-administered First Nations policing services, the Hollow Water Healing Program, the diversion program of Aboriginal Legal Services in Toronto). Unfortunately the funding context often limits necessary preparatory work since funding is usually for a specified time period, for a specific objective entailing a specific hiring. There is then a tendency to rush into a service activity whereas clearly both government funders and community advocates must recognize that developing efficient effective justice initiatives in typically small communities with limited resources usually requires a pre-implementation development phase.

2. Need to select the right staff

Past justice initiatives typically have entailed the hiring of one or two staff persons to coordinate developments, provide services and the like. With the limited resources made available, the short-term time frame, and the combination often of high expectations and 'lots to do' (either because of little other programming or lack of effective collaboration of community programs), the need to select the right person(s) is very crucial; often the wrong choice is fatal for the project. A selection committee should determine the kind of program/project objectives and processes desired, the kind of person(s) most suitable under those circumstances, and then arrange for a selection process.

3. Networking with mainstream CJS officials is essential

Virtually all Aboriginal justice initiatives will require collaboration with mainstream justice officials. Whether it be the judge who facilitates sentencing circles, the prosecutor who channels cases to a diversion program, corrections officials sponsoring various parole alternatives, or the provincial police who provide backup and special services to First Nation police services and/or First Nation communities, mainstream justice officials are crucial contact points and regular networking must be done with them in order to ensure a program's success. This is especially the case since there are few on-going funded Aboriginal justice programs and little explicit constitutional basis for most Aboriginal justice initiatives. The evidence from interviews with Aboriginal role players appears to be that most mainstream justice officials are fairly positive about the new initiatives but they are often confused about the project's objectives and procedures, and about the role of their front line staff (e.g. community justice workers). The officials often refer to the need for more communication with the projects' staff. Successful Aboriginal justice initiatives such as Aboriginal Legal Services, Hollow Water Healing, and Six Nations Police Service all have in common, excellent networks with mainstream justice officials.

4. Equity in carrying out a program is a key to the legitimation of authority

While it is expected that all Aboriginal justice initiatives will have the formal approval of chief and council, the legitimation of their authority in the community (and certainly the level of respect for the program and its staff) will also depend upon how effective the staff have been in treating cases and persons equitably (i.e. being fair to all participants and treating all persons equally insofar as the case circumstances and community-sanctioned bio-social statuses are similar) and in communicating that accomplishment to the community at large. This accomplishment is always difficult and perhaps especially so in small communities where kinship ties are dense and where formality and distant relations between staff and service users are less likely. Where equity has not been seen to have been achieved (e.g. several diversion projects) the Aboriginal justice initiatives have faltered but its achievement can effectively cancel out many other project shortcomings.

5. Need to buffer the project's operations from political issues whether local or between First Nations and the wider society

Unless the initiative is buffered from direct local political pressure it may not survive electoral changes in chief and council membership (as has happened in several instances) and/or will not achieve equity, efficiency and effectiveness. In the case of policing services, a well functioning board accomplishes this buffer function whereas for other justice initiatives a representative community justice committee can perform this valuable function. Written guidelines (conflict of interest guidelines and other operating procedures) and program mission statements and service philosophy statements can also be helpful and are the hallmark of some of the best Aboriginal justice initiatives. Of course projects can sometimes also become hostages in conflicts between community authorities and outside governments; indeed, a common reason for a project's demise has frequently been this kind of political conflict. It may not be possible or even desirable to buffer a project from these conflicts since clearly the larger political agendas may well represent more important priorities. Nevertheless a well-managed operation with a good communication system and practised networking can sometimes carry on in the midst of significant larger conflict.

6. Involve the community at large

It is important to involve the community at large and not simply the few persons involved directly in the justice initiative whether as staff or committee members. Reaching out to the larger community facilitates the development of a strong community, and the legitimation of the program; it provides access to further ideas and resources, and helps the organization avoid burn-out; in small communities it is often the case that only a small handful of people serve on all committees. This objective of involving the community at large can be achieved through community information sessions, newsletters, and expanded committees or panels.

7. Assess and communicate

A well-run program is one where the staff is regularly assessing its activities in relation to the program's mission statements, goals and objectives, AND reporting on these assessments to targets groups and the community in general. Preparing regular reports (they need be only a few pages in length) focuses staff on its main tasks and enables it to see the forest as well as the trees. Communicating such reports beyond the organization establishes the willingness of project leaders to be accountable to their constituency.

8. Avoid being spread too thin

Developing an efficient, effective and equitable Aboriginal justice initiative is usually a demanding task, requiring significant institution building at the local level even while operating in a situation where objectives may be unclear, jurisdiction ambiguous and funding short-term. There is tremendous pressure to pursue other funding leads and to expand the mandate and core activities/services rather than dealing with shortcomings and problems basic to the tasks at hand. Getting involved in too many activities and services has been one of the chief problems in Aboriginal justice projects, an understandable, though often fatal, response to the absence of service infrastructure in the community, the funding constraints, and the lack of management expertise.

9. Youth programming is always popular

Studies, program evaluations and basic research, generally point to the widespread view in Aboriginal communities that justice initiatives of diverse sorts are especially needed for youth. Youth-oriented programs typically receive strong community support. These initiatives might include school programs such as the RCMP's Aboriginal Shield Program, alternative measures for youth (e..g. sentence advisory groups in Alberta), and family group conferencing. Sentence dispositions can range from wilderness experience to more conventional community service orders. While a strong case can be made for emphasizing youth-oriented initiatives, it is unfortunate that few programs are directed at the chief offenders (according to police and court statistics) namely young male adults; virtually all research on crime and social disorder in Aboriginal communities has consistently identified the young male adults as disproportionately involved and a small subset of them as constituting a major recidivist grouping; yet few programs are directed at this subgroup.

10. Raising the issues and dealing with criticisms

It is important to remember that criticism does not mean disapproval of the program. Evaluations of many Aboriginal diversion projects for example revealed much victim and community criticisms but the respondents still valued the initiative. Criticisms can be used to develop a better program. Also sometimes it is important to discuss with people to remind people why the initiative is being undertaken and what the alternatives are; for example many persons may say that diversion is only a slap on the wrist but at least the offender does something for the victim and/or the community whereas in the mainstream justice system one cannot even guarantee that kind of action. Raising the issues and dealing with criticisms allow for program clarification, reflects an openness to ideas, a willingness to be accountable, and

conveys clearly to community members that "it's their project too". This collaborative partnering can be accomplished by special discussion sessions with special groups (focus groups), by periodic review of project protocols, and by regularly scheduled community sessions.

11. Need to retain a balanced perspective

Patience is clearly a requirement in the process of developing new justice initiatives. Community expectations may be very demanding, and even unrealistic in the short-run (e.g. a common experience of self-administered First Nation police services). Sometimes there may be much ambiguity about an initiative in the community and also among mainstream justice system collaborators (e.g. a common occurrence in Aboriginal adult diversion programs); this is to expected when projects are 'breaking new ground'. As the old saying goes, "Rome was not built in a day"; certainly the Canadian Justice system was not, and a distinctive, well-functioning Aboriginal alternative will not be. At the same time complacency must be avoided since resources have to be carefully husbanded (they generally fall short of staff's perceived levels of need) and rarely does project funding carry a long time frame (virtually all previous Aboriginal justice projects have received only short-term funding); accordingly, it is necessary for project managers to be 'on top of the situation', able to marshall evidence for implementation and impact, to make a case for project continuance if desirable, and/or to build on accomplishments and pursue other related possibilities. In other words there is a need for balance, for patience tempered with preparedness and activism.