

Innovations in Aboriginal Justice

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Putting aside everything David Arnot has said about my past experience, I would like to summarize it by saying that I have a vision and a belief and I am very committed to working towards them. That vision, in many ways, is a belief that we can restore harmony. I would like to base this discussion around that concept of restoration of harmony.

I think I would also like to base my presentation on the issues addressed by many of the individuals speaking before me. Our formal justice system is not working, more particularly, it is not working for aboriginal people. This is a recurring theme and I believe that it is a consensus, especially among aboriginal people.

I would like to talk about bringing this problem to a real place, where it is actually happening, to see what it is all about. When we talk about restorative justice, I think of it as restorative communities, including the individual, the family and the community. This is what we are working towards. We are also looking at conflict in crime as an opportunity. It is an opportunity for growth and it is an opportunity for change and that is something that I also fundamentally believe. I have seen it in action in our communities. I have seen how many of the people that we would label, in mainstream society, as criminals, or individuals who are disruptive or dangerous or at risk, actually have a tremendous amount to offer. We are finding this in our communities every day. These individuals are becoming the strong role models in our communities.

I would also like to talk about the past. Many people have heard that we, as aboriginal people, and Cathy Lewis spoke about this earlier, had many beliefs and values in our past and about the fact that we still hold many of these beliefs and values in our present. My understanding is, and the more I learn the more I am convinced, that what we once had was very sophisticated. They were beliefs based on universal, natural, and spiritual laws so that, when we talked about our values, these values were our laws. We lived our values. They aren't something that is external, but internal. They guide how we act, how we treat other people, and how we treat the earth. There are many beliefs, and it is very very difficult to truncate some of these concepts into a relatively short talk, but one of the examples I would like to talk about is the difference in the way aboriginal people view the world. It is quite true that often it contrasts sharply with the systems that we have in place now. I don't necessarily believe this contrast is toward people, or other races, but to the systems themselves. For example, the earth, the water, the air, the four-legged animals and the winged-ones were all above us, human beings. They came before us. We are basically the least important and the least needed specie. We rely completely on those other elements for our survival and our existence. With that as a basis, and

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spirituality being the foundation of it all, our teachings and beliefs come from that view. When I talk about restoration of harmony, First Nation people believe that they once had harmony. Harmony does not mean that we don't have conflicts, that we don't have change, that we don't have anger and fear. In many ways, harmony is when we can connect to each other, and the earth in a way that is respectful and honourable. It means that we can resolve our conflicts and grow from them but that it is still possible to disagree.

Presently, in many of our First Nation communities we have deep problems. When I listen to Cathy I see and hear much of her pain and, I can relate to it. Over the years, I have found myself distancing myself somewhat from this pain because it is truly there and it can be very difficult at times. In some of our communities, we have an 80% unemployment rate, we have a tremendous amount of dependants because many people are either dependant on social assistance or have been highly influenced by the residential schools and many other influencing factors. When we talk about what we are doing with community justice or restorative justice, we are basically trying to give the responsibility back to the people to resolve their own problems and really that is what it comes down to. We all know what we need for ourselves and our own well-being and we have to really trust and believe that the communities know what they need for themselves. In many of our communities, 90% of the crimes we are seeing are alcohol related. On average, in the community that I work in, out of the 65 offenders that we have looked at, the average offender had 20 previous, that is averaging 20 previous, convictions. Some individuals have 70 or more previous convictions. In this community, there was one occasion when we saw an individual come before the justice community with four previous convictions. We were in shock. It is very rare. We thought that there was something wrong with the record. So basically what we are dealing with are a tremendous number of social issues. So what are we working towards? We are working towards the restoration of harmony and we are recognizing again that conflict, crime and change are all an opportunity for growth and that like all races and all people, our communities are evolving.

When we talk about restorative justice and community justice, I think certain things are fundamental. The foundation we are talking about, and Cathy spoke of it earlier, is values, these values which become our laws. I don't think that we have restorative justice, community justice, unless we take the time to talk about what these values are going to be, what the principles are going to be, and what the beliefs will be. If we have that foundation, then the process is oftentimes irrelevant. The process has to be relevant to the community and to the people whom it is going to benefit. Some of these things people have to identify because some of these values have to change. This is what we talk about when we talk about natural law or universal law. Some of these things have been held sacred by First Nation communities and anyone in this room will be able to identify with them because they are common values. These are, again, natural or universal beliefs. People may use them or view them in different ways and that is to be respected and it is important not to influence anybody's values. They are what we hear and see from the time we are children. In many of our First Nation communities, we talk about respect, how it is taught, how it is lived. Between harming the earth or oneself, the greatest sin is to harm oneself and to harm one's own future, this is one of the beliefs. Respect for the self, respect for others, respect for the community and honesty are taught to all of us from the time we are children. Living this way is a law, the law of sharing. I see people with nothing giving away what they have. I come from the best and worst of both worlds and I often struggle with some of these concepts. The belief behind this is that you will always

get back twice as much as you gave. There are many beliefs behind these values, I guess everything is meant to be shared : strength and humility for example. The humility and the humbleness are so important because they are a recognition that we don't have all of the answers, that technology doesn't have all of the answers, that sometimes we have to rely on a greater source to have the answers and that we have to rely on each other. No one individual can have all of the answers, we each have something to contribute to the bigger picture : faith and love. What we see in the community, when we talk about community justice, is why does a community of 20, 30 or 60 people come out when one individual is being sentenced? It is because they have known this person since he/she was a child. The person either knows the aunt, or is herself the aunt. They know that this person is somebody that is important to their community. They know this person's spirit. They know what this person has to contribute, the good side and the bad side. So the community comes out because they love and care about this person.

There have been many prophecies and many teachings that talk about the hoop of many hoops and I guess, in listening earlier to Jonathan, I thought : "boy ". It was kind of hard to take, but at the same time, I have to agree. I don't think that any one process is the right process. I don't see any panacea but I think that again, when we look at the foundation of what we are doing, this is very important and, when we talk about the circle, many people have literally put it into a category of circle sentencing. However, in reality, when we look at the circle, it includes many things and much of our teachings. Basically the teachings have no end so, it is looking at it in a much broader view, with a lot of faith, that you can look at it, just let it go and trust that a much bigger picture will emerge, one which will include individual healing circles, family healing circles, community healing circles and circle sentencing. There is a broad spectrum of ways to use the circle and the variety does facilitate some very important things we are trying to achieve.

I would just like to talk briefly about the belief that in our community we are trying to reach a consensus on some of the visions, some of the beliefs. Why are we doing this? Some of those beliefs come from our tradition, from our culture. The belief that the harm of one is the harm of all, the joy of one is the joy of all. I think that even in a larger picture, in a community, in a family, we know that in our own families when one family member is hurting, it unbalances our families. We are all affected by it. It may seem somewhat idealistic but, many times, we try to deny that our neighbour is harmed. We try to believe that once we put him in jail, we have dealt with it, not really thinking that, at a later date he may move in beside me and, if he is not dealt with or treated, then he could become my problem. So we need to look at the much bigger picture. We need to recognize the problem. As a community, we have talked about much of these beliefs, and this is just one of the beliefs I would like to share with you.

I think it is important that we talk about principles, and I have heard others talk about this. We need to really talk about what these principles mean because this has been an extremely difficult task. It has been really hard on our communities. In the communities, basically what we are looking at is healing. Healing is basically the cornerstone for the offender, for the victim, for the community as a whole and the community benefits when it begins to recognize a problem as a "community " problem. One example being, oftentimes the majority of our offenders are jailed for impaired driving. There is no direct victim, so a lot of the criticism towards this type of work has been in relation to the victim. How do you deal with that? When you have 40 or more of

your community members come out and say "we are the victim", this affects our community and they begin to talk about it, not as an individual, but as the community's problem. They say "we have a huge problem with impaired driving in our community, it has affected so-and-so, it has affected [...]" so people begin to see it, not as the individual, but as a much bigger picture. So the focus and the cornerstone are ultimately on healing, on restoring the situation, learning from it and growing. How can we correct it? I think, and it is really one of the things that I would like to emphasize, that with any restorative justice approach we begin to deal with, we need to really look at what community driving means, we need to think about what community relevancy means.

The Kwanlin Dun community is an urban multi-nation community. It is located within the City of Whitehorse. Before settling in Whitehorse, it was relocated seven times. It is a community made up of 14 different First Nations so when we talk about values and coming to some sort of understanding, the natural laws and the principles are things that we could agree on. We have to recognize that every community had a different value structure, the way they implemented it and so on. Some of the basic things were ways that we could, as a multi-nation community, agree on. Healing, reintegration, restoring the community and restoring harmony, are things we could agree on. One of the many principles is flexibility. Every individual, every case, every offender, every victim is unique. What we are talking about is a wide spectrum where you have to go from crime prevention right through to people who talk about pre-charge and post-charge. Much work is done in our community that we would refer to as "pre-charge" where we try to work a lot with the youth in crime-prevention activities. If there is a conflict in the community or among families, the concerned individuals come in and those conflicts get mediated and dealt with before they actually end up in the formal justice system. There is a tremendous amount of that type of work happening in the community. Basically, all of the concepts are based on certain criteria and the will to deal with the problem has to be present. We have a process to assess whether that will is there. We deal with the past, recognizing the underlying issues, what has brought us to this present-day situation, right from the childhood issues. So much of what brings people into criminal activity, into that type of behaviour, has a lot to do with what they have learned in the past. So we begin to look at the past, the present and the future; that is transformation, it is balance. We include the offender, the victim, the family and the community. When we look at the individual offender for example, we have a post-charge process which looks at circle sentencing. A process is in place where the individual has the option of choosing to apply to a sentencing circle. If this is what they wish, they fill out an application, and at that time, they let the court-worker, the judge and other people know, once they have entered a guilty plea, that they are interested in applying to their community for a sentencing circle. They then come before a justice committee that is made up of grass-roots people : elders, community members; people who have been there for a long time (know everyone in the community) and are somewhat on their own healing journey. The individual comes to the committee and some of the things the committee looks for, specifically, is the will, the motivation, the determination of the individual to start dealing with his/her past, to begin to deal with the issues. What has gotten them there in the first place? The community asks a lot of questions and really works with the offender. It asks : " What are you doing, what kind of future do you want? What do you think an appropriate sentence should be?" On many occasions, we actually have them decide their own sentence. It is sometimes very difficult to come up with the right formula in the justice committee. Some of the elders will say "The person is spiritually ready to change" and that is a real connection, a real intuition

that our elders and many people in our community still have. It is not really something that you can put on a forum and say "This is how it is going to be done". Then the individual is asked to begin to address some of the physical, mental and emotional issues. We recognize that people heal in different ways. We recognize that a person may heal by emotional treatment, counseling and so on. We recognize that a person may heal by being put in a wilderness camp. Some people go to college and do really well and that is all that they really needed. We recognize that people are at different places in their own development and wellness. What the committee is there to do is to contribute mental information, to encourage the individual to look at schooling, for example, if that is where they are in their development process. They are there to encourage and guide the individuals to elders and other spiritual counselors who will help to find out where they are at spiritually. The committee is there to hold them emotionally accountable also, to begin to look at the emotional issues, at their own choice and will and physical well-being. Individuals are asked to prepare wellness and action plans which will include how they are going to address the needs and concerns of the victims, what restitution is possible. This process is similar to the one we go through with the victim. When we accept an offender into the process, we let them know that they have been accepted based on "them walking their talk" and based on what they have done today. After a period of six to eight weeks, during which the individual is monitored closely by their community, if they are "walking their talk" and demonstrating their motivation to change, then the community continues to support them. However, if at any time this isn't happening, then the community simply says "We can see that you are not ready, but we will be here when you are". So they have to screen some people out of the process simply because they are not ready. This is a process equal to the one afforded to the victim. When we are dealing with spousal assault, many of our victims, and again, it is very difficult to get into this in a short period of time, have been in many previous spousal relationships where assault were prevalent. There is a cycle there. We want to support them and teach them to become survivors rather than victims. That is, if they choose to, if that is their will. If it is not, then their needs and concerns are their own. Every case and every situation is flexible. Fundamentally, this is about community development. There is nothing perfect, there is nothing pretty, nothing straight and narrow about it. It is quite messy. There is a lot of pain and there is a lot of healing. There is a tremendous amount of growing happening in our communities. Our communities are going to heal whether the formal justice system chooses to develop a partnership with us or not.

I would like to put my two-bits in for circle sentencing. What I have seen is that the possibility for a partnership exists. I think it would be a tough partnership but I think there is a lot to learn from it. I think it is one that can happen, and I have seen it happen, and we have learned and grown on both sides. I think that, if we start with the premise that our formal justice system isn't working for aboriginal people, then we should move to a place where, I feel, the formal justice system can do as much good as it is doing bad. It should begin by recognizing and taking the time to explore what the partnerships are about, by meeting, half way, on the bridge. Maybe, because of my experience, I am idealistic but I really do believe that the justice system can take a more pro-active role. When we talk about the need for autonomy, when we talk about the need to make sure things are balanced in our communities and in our formal justice system, I believe that this can be achieved by our partnership. I also believe that, over a period of time, the community may not need the formal justice system anymore and I think this hypothesis needs to be accepted also. That may be a good opportunity for the mainstream to begin

to clean up their own backyards. I think that I would like to reiterate that I don't think there is any one process that we should try to use across the board. I think this would be very, very dangerous. I have some of the same concerns about family conferencing and this has been echoed among First Nation people across this country. Many of the reasons why people like this procedure is that it is fast, it is slick, but dealing with our issues and dealing with our pain is not fast and it is not slick. I think that, if we can recognize that many of the principles that were derived for family group conferencing are based on the values and principles explained earlier, and how we deal with them, then the solution should be left up to the community.