Duelling Paradigms? Western Criminal Justice versus Aboriginal Community Healing

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Introduction

During the June 1993 conference of the Northern Justice Society, the issue of family violence was uppermost in everyone's mind. At one of the workshops, participants were asked to pretend that they were a community justice committee trying to decide what to recommend to a court about a particular case.

The facts provided involved a man who had beaten his wife many times. He had already served time in jail, but the beatings continued. His latest charge had been adjourned so that a community healing circle could be formed to help all concerned. Two months later, despite the man's attendance at weekly healing circles, he beat his wife again. Our assignment was to suggest to the court what should be done in light of the failure of that healing circle.

The small group I was in was composed of an equal mix of Aboriginal and non-Aboriginal people. We all agreed that the first priority was to protect the wife and children. A number of mechanisms were suggested by the Aboriginal participants, including having the dysfunctional family move in with them so that they could learn "healthy" ways. When our attention turned to the abuser, a white participant put forward his view that on occasion you simply had to recognize that you were dealing with one of those "bad guys" for whom there was no option but a lengthy jail term. He asked if people thought this was such a man. I was watching the Aboriginal women in the group when that possibility was put forward. Almost in unison, their heads snapped back in apparent shock. Their unanimous response was an almost indignant, "No!"

The Aboriginal people then took over the discussion. An Inuit man,

through his translator, said that this was exactly the problem when the court came into his community. He complained that the Crown and the judge always called people "bad." He said you can't do that if you want someone to be good. An Aboriginal lady complained that just because the community hadn't been able to alter the abuser's behaviour so far didn't mean that the healing approach was no good. She talked about how the western system had kept on using jail for hundreds of years even though it didn't work. She asked why the system tried to prevent Native people from developing their healing approaches as soon as they experienced a failure. Another asked how jail could be any protection, given that when the offender comes out he still needs healing, only now that task is made harder because of where he's been, what he's learned and how angry he has become. "To give protection in your way," said another, "you'd have to keep him there forever."

I have heard such perspectives expressed in a growing number of Aboriginal communities across the country. They seem to be speaking about a picture of justice that is very different from the one I've been trained in. Indeed, many who speak from within this perspective don't even seem to begin their analysis of justice where we do. For them, the exhaustive dissection of justice issues contained in the reports of numerous royal commissions and task forces, with their focus on judges, Crown attorneys, lawyers, police, prisons and so forth, seems almost beside the point.

They look first toward very different kinds of players, people like alcohol and family violence workers, traditional healers, mental health workers, sexual abuse counsellors and the like. They then speak of creating (or re-creating) very different processes, ones that are conciliatory, bridging and educational as opposed to adversarial. Finally, they seem to focus on very different goals as well, discarding the retroactive imposition of punishment for things that have already happened in favour of trying to bring people, families and communities into health and wholeness for the future.

I don't mean to suggest that all Aboriginal communities are actually taking this purely rehabilitative approach, but it seems to be increasingly reflected in Aboriginal analyses of community problems, and in the kinds of remedies being recommended.

In this paper, I want to examine the two different justice paradigms that seem to be at work as Aboriginal justice initiatives emerge across the country. In the first section, I will review a six-year-old program dealing with sexual abuse on the Hollow Water Reserve in northern Manitoba. Its adoption of the healing paradigm and its rejection of the western criminal justice paradigm provides the most dramatic illustration of the differences between the two that I have come across so far.

In the second section, I will briefly review the Sandy Lake and

Attawapiskat projects in northwestern Ontario. While their reasons for getting involved with justice issues seem to flow from within the healing perspective, the routes they have taken demonstrate substantial conformity with western justice processes. Furthermore, they stand as good illustrations of the kinds of justice projects that have dominated the Aboriginal justice scene, at least until recently.

The third section constitutes the bulk of the paper. It raises ten practical issues that I suggest should be considered when Aboriginal justice projects are being designed. Depending upon which of the two justice paradigms predominate in the final project, those ten issues may lead the projects—and the communities involved—in very different directions. During this last discussion, I refer to the following documents:

- the evaluation reports of the Sandy Lake and Attawapiskat justice projects, prepared by Obonsawin-Irwin Consulting for the Ontario Ministry of the Attorney General;
- the "Assessment of Future Aboriginal Justice Project Development Needs," also prepared by Obonsawin-Irwin Consulting for the Ontario Ministry of the Attorney General;
- the "Report on Aboriginal Justice in The Yukon," prepared by Carol La Prairie for the Yukon Department of Justice, and
- the "Final Report on Community Consultations," prepared by Grand Council Treaty 3 in northwestern Ontario as an initial step in developing an Aboriginal family violence strategy for its twenty-five member communities.

THE HOLLOW WATER APPROACH

Hollow Water is an Ojibway community of some six hundred people located on the east side of Lake Winnipeg, two hundred kilometres north of Winnipeg. In 1984, a group of social service providers got together, concerned about the future of their young people. As they looked into the issues of youth substance abuse, vandalism, truancy and suicide, their focus shifted to the home life of those children, and to the substance abuse and family violence that often prevailed. Upon closer examination of those issues, the focus changed again, for inter-generational sexual abuse was identified as the root problem. Other dysfunctional behaviour came to be seen primarily as symptomatic. By 1987, they began to tackle sexual abuse head-on, creating what they have called their Community Holistic Circle Healing Program. They presently estimate that 75 percent of the population of Hollow Water are victims of sexual abuse, and 35 percent are "victimizers."

The providers formed a broad-based team to both promote and respond to disclosure. It includes such people as the child protection worker, the community health representative, the nurse-in-charge and the NAADAP

worker, together with other team members drawn from the RCMP, the Frontier School Division and community churches. The majority of the team members are women, many of whom are volunteers.

The teams decided they had to break down the professional barriers between them, including separate chains of reporting and confidentiality, to create a co-ordinated response. They felt that as long as each helper worked in isolation on separate aspects of each troubled person or family, the result would be a further splintering—exactly the opposite of their goal of creating "whole" people. Outside professionals, highly regarded by the team for their knowledge and experience, were seen from the outset as necessary to the project's success. They were required, however, to "sign on" to a co-ordinated team approach. They also had to permit a "lay" member of the team to be with them at all times, so that their skills could be learned by community members and so they could learn of the community approach to healing. Partnership was, and remains, the model.

The teams evolved a very detailed protocol involving thirteen steps from initial disclosure to the creation of a healing contract and, if all other steps are successful, to the cleansing ceremony. The healing contract is designed by a wide group of people involved in or personally touched by the offence, and it requires that they each "sign on" to bring certain changes or additions to their relationships with all the others. Such contracts are never expected to last for less than two years, given the challenges involved in bringing about true healing. One of these contracts is still being adhered to five years after its creation. If and when the healing contract is successfully completed, the cleansing ceremony is held to, as they phrase it, "mark a new beginning for all involved" and to "honour the victimizer for completing the healing contract/process."

Criminal charges are laid as soon as possible after disclosure. The victimizer is given the choice of proceeding on his or her own through the criminal process or proceeding with the healing support of the team. To gain the latter, however, he or she must accept full responsibility for his or her acts and enter a guilty plea at the earliest opportunity. Virtually all accused have requested the team's support, with the result that trials are rare.

The team requests that the court delay sentencing for as long as possible so that they can begin both their healing work and their preparation of a pre-sentence report. That report is a voluminous document, analyzing everything from the offender's state of mind, level of effort and chance of full rehabilitation, to the reactions, feelings, plans and suggestions of all people affected, with special attention to the victim, the non-offending spouse and the families of each of them. It also proposes a plan of action based upon the healing contract. The team requests that any probation order

require the offender's full co-operation with their healing efforts. If jail is imposed, they do what they can to arrange regular work with the offender while in custody and to prepare everyone for the day of release.

At all times, from the moment of disclosure through to the cleansing ceremony, team members have responsibility to work with, protect, support, teach and encourage a wide range of people. It is their view that since a great many people are affected by each disclosure, all of them deserve assistance and, just as important, all of them must be involved in any process aimed at creating healthy dynamics and breaking the inter-generational chain of abuse. I watched them plan for a possible confrontation with a suspected victimizer, and the detailed dispersal of team members throughout the community to support those whom the disclosure would touch reminded me of a military operation in its logistical complexity.

Virtually all the team members from the community are themselves victims of long-standing sexual abuse, primarily at the hands of family members. It is their perspectives on the dynamics of sexual abuse that seem to prevail. Even former victimizers who have been honoured for completing their healing process are being asked to join the team. The personal experience of team members in the emotional, mental, physical and spiritual complexities of sexual abuse permits them an extraordinary rapport with victims and victimizers alike.

I sat with team members in circles as they shared their own histories as a way to coax others out of the anger, denial, guilt, fear, self-loathing and hurt that must be dealt with if health is to be re-established. Their personal experience permits them the patience necessary to embark on very long processes, and to see signs of progress that might escape the notice of others. It also gives them the insight to recognize who is manipulating or hiding in denial, and the toughness to keep those in denial from staying there.

This healing process is painful, for it involves stripping away all the excuses, justifications, angers and other defences of each abuser until, finally, confronted with a victim who has been made strong enough to expose his or her pain in their presence, that abuser actually feels the pain he or she created. Only then can the re-building begin, both for the abuser and for the abused. The word "healing" seems such a soft word, but the process of healing within the Hollow Water program is anything but.

When the accused finally comes to court for sentencing, the team is brutally honest about the sincerity of his or her efforts and about how much work still has to be done. That does not mean, however, that the accused who is still resisting the team's efforts to break through his or her defences is abandoned to jail. Far from it. While western justice systems seem to have forged an unbreakable link between "holding someone responsible for their crime" and sending them to jail, Hollow Water fiercely

denies the wisdom of that connection. I will let their 1993 position paper on the issue of jail speak for itself:

> CHCH's position on the use of incarceration, and its relationship to an individual's healing process, has changed over time. In our initial efforts to break the vicious cycle of abuse that was occurring in our community, we took the position that we needed to promote the use of incarceration in cases which were defined as "too serious." After some time, however, we came to the conclusion that this position was adding significantly to the difficulty of what was already complex casework.
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> As we worked through the casework difficulties that arose out of this position, we came to realize two things:
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> • that as we both shared our own stories of victimization and learned from our experiences in assisting others in dealing with the pain of their victimization, it became very difficult to define "too serious." The quantity or quality of pain felt by the victim, the family/ies and the community did not seem to be directly connected to any specific acts of victimization. Attempts, for example, by the courts—and to a certain degree by ourselves—to define a particular victimization as "too serious" and another as "not too serious" (e.g., "only" fondling vs. actual intercourse; victim is daughter vs. victim is nephew; one victim vs. four victims) were gross oversimplifications, and certainly not valid from an experiential point of view, and
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> • that promoting incarceration was based in, and motivated by, a mixture of feelings of anger, revenge, guilt and shame on our part, and around our personal victimization issues, rather than in the healthy resolution of the victimization we were trying to address.
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> Thus, our position on the use of incarceration has shifted. At the same time, we understand how the legal system continues to use and view incarceration—as punishment and deterrence for the victimizers (offenders) and protection and safety for the victim(s) and community. What the legal system seems to not understand is the complexity of the issues involved in breaking the cycle of abuse that exists in our community.
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> The use of judgement and punishment actually works against the healing process. An already unbalanced person is moved further out of balance.
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> What the threat of incarceration does do is keep people from coming forward and taking responsibility for the hurt they are causing. It reinforces the silence, and therefore promotes, rather than breaks, the cycle of violence that exists. In reality, rather than making the community a safer place, the threat of jail places the community more at risk.
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> In order to break the cycle, we believe that victimizer accountability must be to, and support must come from, those most affected by the vic-

> timization—the victim, the family/ies, and the community. Removal of the victimizer from those who must, and are best able to, hold him/her accountable, and to offer him/her support, adds complexity to already existing dynamics of denial, guilt and shame. The healing process of all parties is therefore at best delayed, and most often actually deterred.
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> The legal system, based on principles of punishment and deterrence, as we see it, simply is not working. We cannot understand how the legal system doesn't see this.

Their position paper goes on to speak of the need to break free of the adversarial nature of court proceedings, the impediment to healing that arises when defence counsel recommend both complete silence and pleas of Not Guilty, and the second victimization that occurs as victims are cross-examined on the witness stand. In the team's view, "The courtroom and process simply is not a safe place for the victim to address the victimization—nor is it a safe place for the victimizer to come forward and take responsibility for what has happened."

Toward the conclusion of the position paper, the following passages appear:

> We do not see our present position on incarceration as either "an easy way out" for the victimizer, or as the victimizer "getting away." We see it rather as establishing a very clear line of accountability between the victimizer and his or her community. What follows from that line is a process that we believe is not only much more difficult for the victimizer, but also much more likely to heal the victimization, than doing time in jail could ever be.
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> Our children and the community can no longer afford the price the legal system is extracting in its attempts to provide justice in our community.

Up until now, the largest portion of Hollow Water's work takes place away from the courtroom. Instead, the team works with affected people wherever and whenever they can. Virtually all of their work, including case debriefings for team members, takes place in a circle format, opened and closed by prayers, and respecting the non-blaming imperative that the circle both demands and helps foster. It has only been their assessments, pre-sentence reports and action plans that have been part of court proceedings thus far. In the fall of 1993, however, they will take their circle into the courtroom so that the judge can hear directly from the people, the family/ies and the community.

More detail about the Hollow Water approach will be given at later stages of this paper as various issues are explored. At this point, I only wish to underline how differently they approach the three aspects of justice re-

cited earlier: the identification of necessary players, the development of the most productive processes, and the articulation of their common goals.

It seems clear that when they speak of justice—even in the horrific context of prolonged sexual abuse—they do so from within a very different paradigm. It is also clear that they consider our continued imposition of the adversarial and punitive western paradigm to be counter-productive in the extreme.

THE SANDY LAKE AND ATTAWAPISKAT APPROACHES

The Hollow Water initiative, as we have seen, grew out of an initial attempt to find concrete solutions for particular community problems. It was only after they developed their team and processes that they approached the legal system's judges, lawyers and others. Further, their request was not to take over the functions of those people; instead, they asked that some practices of that legal system be modified to accommodate, rather than frustrate, what they wanted to continue doing on their own.

The Sandy Lake and Attawapiskat initiatives, in their initial proposals, articulated a similar philosophical perspective. The Sandy Lake proposal, for example, included the following:

> Probably one of the most serious gaps in the system is the different perception of wrongdoing and how to best treat it. In the non-Indian society, committing a crime seems to mean that the individual is a bad person and therefore must be punished. . . . The Indian communities view a wrongdoing as a misbehaviour which requires teaching or an illness which requires healing.

Their actual request, however, had nothing to do with funding healing alternatives to the western justice system. Instead, they asked that Aboriginal people be granted roles within that western legal system.

The Sandy Lake elders' panel, for instance, sits in a "co-judging" capacity with either the provincial court judge or justice of the peace at the time of sentencing. Their sentencing recommendations are, with very rare exceptions, adopted by the court. They do not participate in trials. Their recommended sentences regularly involve treatment programs, restitution, donations to support a community security force and community service work. As the original justice co-ordinator expressed it, they were looking for "a marriage between the two systems," one in which traditional Aboriginal values might find expression within western processes.

When the elders deal with someone who refuses to respond to their assistance and counsel, they advise the court of that fact and then state that

they have nothing more to say. We have come to see this as a modern form of banishment from the community, with the only difference being that such offenders are banished into the hands of the outside justice system instead of Mother Nature. For our part, we interpret this as an acknowledgement that jail is, regrettably, at least a temporary necessity.

In Attawapiskat, the elders hear the majority of cases on their own in a community court, complete with its own summonses and subpoenas. The central rule of that court is "No Lawyers." The cases they hear are those which they and the Crown attorney agree should be diverted and are unlikely to require a jail sentence. Their "sentences," like those in Sandy Lake, regularly involve community service work, restitution, donations and counselling. Their only coercive power flows from the fact that the charges have simply been stayed in the provincial court and can be reactivated at any time within a year if the accused defies the sentence of the elders' court.

In both communities, therefore, the first focus was upon gaining involvement in, or some measure of control over, the western legal system. The communities' first efforts have been in incorporating their own people into advisory or substitutionary roles within that system. Both projects have been running for about three years. In neither community was there a concentrated effort aimed at building the kind of co-ordinated healing capacities demonstrated by Hollow Water.

COMPARING THE APPROACHES

TWO PATHS: A COMMON DESTINATION?

As we have seen, both kinds of projects seem to speak the same language, that of restoring, teaching and helping as opposed to simply punishing. They began, however, at very different places. That is not to say that, in theory at least, different beginnings cannot permit arrival at similar destinations. As we shall see, Sandy Lake and Attawapiskat are now beginning to ask governments to fund the creation of better healing resources, for the elders have discovered that without those resources they face the same frustrations in their efforts to bring about real change as the outside judges did. Hollow Water, for its part, is now moving its activities into the courtroom.

I suggest, however, that the choice of initial approach—or at least the choice of which vision will predominate in projects that combine elements of each—will necessarily raise a host of practical issues. In turn, how those issues are dealt with may have a great bearing on whether or not particular projects are able to achieve their goals in safety, with the least community turmoil and in the shortest period of time.

TEN PRACTICAL ISSUES IN THE CHOICE OF APPROACH

1. THE PROBLEM OF POTENTIAL CUSTODY FOR VIOLENT CRIMES

At the outset, it was noted that Aboriginal communities want to try to rid themselves of substance abuse, family violence, youth suicides, sexual abuse and a range of other problems. If, however, their primary focus is upon gaining control over the legal system and establishing community courts, they may find themselves substantially precluded from dealing with some of those concerns.

Crimes involving sexual abuse and serious personal violence are regularly seen by many (including many Aboriginal people) as requiring at least the possibility of jail, if not its actual imposition. Even where significant healing resources exist in a community, the threat of incarceration is often seen as necessary to ensure active involvement by abusers in those painful healing processes.

It is, however, precisely those kinds of cases—those that involve the possibility of custodial sentences—that are likely to remain subject to the mainstream court process, primarily because of the criminal justice system's constitutionally mandated concern for protecting the rights of accused persons. For the foreseeable future, it seems safe to assume these kinds of cases will not find their way into community courts.

To the extent that a community focuses the bulk of its scarce time, energy and resources upon the creation of such courts, they run the risk of being prevented from dealing with serious family violence and sexual abuse issues, save in an advisory capacity at the time of disposition. Instead, community courts are likely to be restricted to such concerns as substance abuse and more minor offences, matters that many people suggest stand more as symptoms of family violence and sexual abuse than as problems in themselves. Even Hollow Water, with its track record of significant success in dealing with sexual abuse, still faces an uphill battle in persuading the mainstream court to alter its normal response, much less discuss a formal transfer of jurisdiction.

Experience also suggests that a great many Aboriginal communities do not want their community court to be dealing with such serious matters. In the Attawapiskat example, when cases involving aggravated assault, sexual assault and assault on a police officer were directed to the elders' court, their very involvement was the subject of substantial complaint in the community. The Obonsawin-Irwin report indicated that three of the nine community leaders interviewed felt that "the Elders Panel was not trained or experienced enough to deal with serious cases" (p. 26).

Nor is it true that all Aboriginal communities want to abolish the use of jail absolutely. I recall a workshop in which I raised, as a problem case, a situation in which an elder was charged with sexually abusing his stepdaughter over a six-year period. Half of the participants in that workshop were Native women, and I expected expressions of shock that I would even suggest that an elder was capable of such behaviour. To my surprise, I received virtually identical stories from three women who lived on different reserves across Canada. In their view, virtually no one has escaped the violence, abuse and self-abuse that characterizes so many reserve communities, elders included. While they all felt that a jail term should not be so long as to destroy the man or his chances for rehabilitation, all felt that a clear denunciatory sentence was required, given the flagrant abuse of his position.

Retention of at least the option of incarceration, therefore, may well prevent community court initiatives from grappling with these kinds of issues. By contrast, people involved in initiatives like Hollow Water utilize all of their scarce time, skills and energies grappling with precisely those underlying, causative issues. It is their view that they will get to the root causes of community dysfunction far faster than any number of elder panels or community courts.

I do not mean to suggest that elders' courts or the like do not have advantages over our traditional court structure when it comes to such issues as substance abuse, youth disruption and people causing more minor problems. Clearly, their rehabilitative focus, their short response time, their use of a First Language and their avoidance of adversarial postures all make coming to a community court a more productive event for many Aboriginal people than being submerged in the outside legal system. Despite the problems identified by Obonsawin-Irwin in looking at Sandy Lake and Attawapiskat, the vast majority of respondents wanted the projects to continue.

I suggest only that if the underlying issues that are destroying communities are to be seriously and productively addressed, then communities and governments might be wise to ask themselves where justice initiatives should concentrate their first efforts. A focus on simply modifying the legal system may not provide what the communities require, for it is likely that the outside courts will be required to retain ultimate jurisdiction over the issues of sexual abuse and extreme family violence because of Charter and other concerns.

2. CONCENTRATING RESPONSIBILITY IN SMALL COMMUNITIES

Anyone living in a small community who is required to exercise a coercive jurisdiction against the wishes of others will make enemies out of some of

those people. The same result will follow if they fail to use it as they should, for there will be charges of favouritism. In one very troubled reserve community in my region, the notion of an elders' council was dismissed out of hand by members of council. The reason they gave was that they valued the lives of their elders too much to expose them to the likelihood of violent revenge by outraged accused and family members.

This, I wish to stress, is a dynamic that exists in any small community, Native or non-Native. The pressures upon such decision-makers are too concrete and too immediate to ignore. Where communities are already riven to a substantial degree by inter-family, inter-church and other animosities, the pressures escalate dramatically. I suggest that it is unrealistic to expect that individuals taking on coercive, mainstream justice roles—elders or not—will survive very long in such an intimidating atmosphere.

By contrast, if the healing approach is predominant, and if the healing group involves a wide number of people, the potential for creating such antagonisms may diminish. In the first place, it may be harder to sustain anger at those who are sincerely trying to help you. In the second, the recommendations of a healing group will have come from a broad collection of people, and that dispersal of involvement may help an angry accused to understand that the group's recommendations, however unpalatable, are not simply the result of ancient antagonisms between hostile subgroups within the community.

Concentrating resources on the development of broad-based healing groups as opposed to narrow-based sentencing (or sentence-advisory) groups may thus help communities overcome one of their most debilitating problems: inter-group mistrust and antagonism. At the same time, it may provide greater protection for each person willing to get involved in turning the community around.

3. The Problem of Community Perception

The oft-recited goals of virtually all Aboriginal justice projects are common. They involve trying to reverse the tide of substance abuse, family violence, sexual abuse and suicide that has swamped too many communities. That does not mean, however, that less altruistic motivations may not also be at work in some communities. Just as important, it does not mean that people in some of those communities will not be suspicious that alternate goals are driving particular initiatives.

Wresting control of aspects of the justice system is, after all, an attractive enterprise from a political perspective, given that criminal justice sits as a point of high-profile conflict between two colliding cultures. Provided there is a clear idea of what will be done after control is assumed, and provided those ideas do not involve increasing abuse of the powerless, such political motivations may be irrelevant. If, however, there is no such clear

idea, and if as a result the project is seen by the community as merely a further accumulation of power by those who seek it for its own sake, then the consequences can easily involve increased community antagonism. If the new power is actually used for abusive purposes, the inevitable result will be an open revolt, which will only contribute to community dysfunction.

In that respect, it is interesting to note that the Treaty 3 report cites such control issues as a cause of violence in its member communities:

> Control issues were also mentioned as presenting problems. There are certain people in First Nations communities who believe they have more power than others and expect to control other people. They seem to have no conscience when it comes to hurting others in pursuit of their own personal gains. (p. 19)

It is also to be noted that in the Obonsawin-Irwin evaluation of the Attawapiskat project, those who were unhappy with the elders' court as it presently exists (43 percent of the respondents) provided their perception that the elders were not always impartial, and that there was a lack of support for victims.

To return to the issue of the potential for legal-system initiatives to be perceived by community members simply as grabs for power, especially by band councils, Obonsawin-Irwin's recommendations for future project development included the following:

> The need to develop justice projects independently from the band political process was stressed by some respondents. . . . The need for an independent body to facilitate the developmental process was also stressed. (p. 6)

The point to be underlined is that in small communities the temptation to abuse power—and the powerless—is especially strong. Significant power is already concentrated in the hands of small sub-groups, and the powerless are all too familiar with how power has been used against them in the past. Many people begin with a stance of suspicion.

What I suggest must be considered is that either the reality, or the perception, of partiality may pose a critical threat to community acceptance of justice projects and, ultimately, to their success. Projects initiated by those in power, be they band councils, select elders or particular families, may be much more open to those accusations, as well as to those temptations. This may be especially true of projects that have as their immediate goal the accumulation of more power through capturing control over aspects of the legal system.

Even some projects focused expressly upon community-based healing

for offenders can result in perceived or actual abuse of power if those who control the access to, and the content of, those healing programs are already powerful people forming a small and distinct group in the community. This is especially true where the project does not include significant healing efforts for victims, their families and other affected persons, for the perception may well exist that the initiative is simply another attempt to protect well-connected abusers.

By contrast, projects which, like Hollow Water, are advanced and operated by a broad spectrum of people who are already professionally involved in healing, who focus not just on the accused but on all people involved and who concentrate upon healing instead of control, may not be as vulnerable to such accusations or temptations. As a result, they may be better able to develop the broad, community support and involvement necessary for the achievement of project goals.

In this connection, the Obonsawin-Irwin reports indicated that in their surveys of both Sandy Lake and Attawapiskat residents the most-mentioned issue was, in fact, community involvement:

> Respondents talked about the need to ensure community involvement in the developmental phase of a project of this nature. Seven of these (18) responses indicated a need for a more gradual process of implementation, insuring community input in the selection of elders *and through community discussion on alternatives.* (pp. 3–4, emphasis added)

If projects focused on the legal system, with all of its control and favouritism issues, run a greater risk of engendering community suspicion instead of support, whether or not that suspicion is deserved, then perhaps that dynamic should be considered at the outset. Where those suspicions prove to be well founded, either because that was the original intent of the project proponents or because those who assumed the power could not resist small-community temptations to use it partially, the projects may either flounder or explode.

As a final note on community perceptions, I must make reference again to the Treaty 3 report. Participants from the twenty-five member communities compiled a list of twenty-six short-term and thirty-one long-term goals. Those goals focused on such things as the need for establishing community self-help groups, family therapy sessions, workshops related to family violence, providing workers with more skills, providing training to parents in parenting skills, establishing treatment centres, and after-care programs for survivors of addictions and abuse. They also asked for "more support and constructive guidance" from chiefs and councils. The report's final recommendations included the following statement:

> Funding for the development of community driven and culturally appropriate *alternatives* to the existing penal and corrections systems must be instituted. (Recommendation 22, emphasis added)

None of those fifty-seven proposals for change spoke of seeking greater control over the legal system and then funnelling such issues through it. Instead, they spoke of seeking and building healing alternatives to it. The report's summary closed with Recommendation 23:

> The *prevention, treatment* and *amelioration* of Family Violence must be integral to the planning and implementation of the Aboriginal, inherent right of self-government jurisdiction, laws, policies and institutions. (Recommendation 23, emphasis added)

This does not mean that Treaty 3 will never seek involvement in the legal system. It does suggest, however, that their apparent first focus will be upon matters other than the processing of criminal charges.

4. THE SUCCESSFUL INVOLVEMENT OF ELDERS

The importance of involving elders in community initiatives is regularly stressed by Aboriginal communities. The issue I wish to raise is: what kind of involvement is most appropriate—and sustainable—for them? I recall an elder who sat with the court in one small northern community. When asked by the judge what he would recommend as a proper sentence for a particular individual, he replied that it was not for him to tell someone else what was right. Gaining an understanding of the traditional role of elders, I suggest, is critical. If they end up in roles that require them to do things that diminish their "elder-ness," then we have done no favours for anyone.

I have watched the elders at Sandy Lake for some two years now—and I watched one of them come to court and speak for some seven years before the project elevated him to formal participation. In essence, it seems that elders cannot become instruments of coercion without abandoning the qualities that earned them the designation of elder in the first place. Instead, their traditional role is to inspire, to teach and to help others make appropriate choices on their own. Except under the rarest of circumstances, their role was not to coerce, and it was not to punish.

Their discomfort with assuming a judicial role in Sandy Lake is most evident when their counselling efforts with a particular accused have failed. They cannot bring themselves to send someone out, regardless of whether they know that such a step is required, either for that individual or for those watching. Their job is to be ready, when he or she returns, to offer what help they can.

It may be that when such elder-as-judge projects were first formulated, it was thought that elders would not have to play a coercive role, that their example and their wisdom would suffice to turn things around. Whether that was a realistic position is, I suggest, open to some question. For example, many of those who most need elder wisdom and assistance are precisely those who have never learned to respect it—or to respect anyone else, for that matter, including themselves. Carol La Prairie raises exactly that issue in her report on justice issues in the Yukon:

> Indeed, the group over whom elders would exercise control in justice matters are the group likely to hold them in the lowest esteem. Those who most often identify elders as the appropriate group to assume control over justice by forming elders' panels and elders' councils are the middle-aged people who hold elders in positions of respect and authority. The groups most often involved as *offenders* in the criminal justice system, youth and young people, do not necessarily share these perceptions. (p. 112, emphasis added)

I do not dispute that the elders have a great deal to contribute to the young people in their communities in terms of the values implicit in traditional teaching. They most certainly do. The issue is whether that contribution is best made from a position as a judge in a courtroom context, within the western justice paradigm. While elders may well be uncomfortable acting as substitute instruments of coercion, it appears that some degree of coercion may well be necessary when dealing with people who, partially because they have not had elder teaching, come into court with little reason to respect or respond to their wisdom, guidance and good will.

The reluctance of elders to act as coercive agents shows up in the comments of people who were unhappy with the present status of the Sandy Lake and Attawapiskat projects. As Obonsawin-Irwin indicate, there was a common complaint in both communities that the elders' court was "too lenient." In the Attawapiskat evaluation, those who were unhappy indicated that "violence has escalated because they know they will only get lectures and a small fine" (p. 42).

In fairness, we might anticipate a higher level of satisfaction if the elders had other alternatives beside those "lectures and a small fine." That problem, however, may only underline the possibility that putting the wisest person in the driver's seat of a justice cart that has inadequate healing horses to pull it in a non-punitive direction will still not get it out of the mud. In fact, it may more frequently serve to create frustration on the part of those wise people who suddenly find themselves in the driver's seat. With few healing resources at their disposal, they may see their best efforts fail to have an impact, through no fault of their own. Such failures may also

cause, ironically and dangerously, a further lessening of community respect for elders amongst those who counted on them to turn things around.

That ironic possibility may be supported by Obonsawin-Irwin's finding that there seems to be substantially greater community support for the project in Sandy Lake (where elders act only as advisors to the court, which is still there to get tough with people if necessary) than there is for the project in Attawapiskat, where the elders are in complete charge but, as noted, virtually helpless in effecting real change.

There is another issue regarding having elders assume a judging/sentencing role, and it was also addressed by Carol La Prairie in her report on the Yukon:

> The potential for discrepancy between the values of the younger and the older community members in justice hearings and decision-making is considerable. Few communities are untouched by events of the past two decades where women's issues, victims' rights, and alternate life-styles have gained respectability and recognition. The social changes evolving from these events may be more in the psyche of the younger than the older members of the communities. The use of elders in justice systems, *to the exclusion of* other age groups, may reflect values not representative of contemporary community values. (p. 112, emphasis added)

This is not to suggest that the restoration of elders' values is not important for a return to community health in many respects. It remains a valid question, however, whether those values may be best articulated, absorbed and acted upon in the context of sentencing hearings or in the context of community self-help groups. Having young people who do not share (or even understand) elder values appear before elders (who may not understand either their values or the pressures they are under) may not, in the context of sentencing, promise a regeneration of respect. To the contrary, mutual misunderstanding might well lead to increased alienation and animosity between them.

Even the issue of elder understanding of the real dynamics in today's communities has been questioned. In the Treaty 3 report, the following observations were made:

> Denial itself is seen as a presenting problem. Accepting that there is a problem with oneself or within the community is a necessary first step in the healing process. If people continue to deny that there is a problem and keep many issues behind closed doors, then that becomes a major problem in itself. (p. 20)

and

> There have been a number of goals and recommendations that state that some persons would like to return to traditional ways through the guidance of the elders. *With due respect to the elders and with recognition of the great contributions they make, it must be brought out that elders themselves are victims of abuse. It is important that the elders embark on a program of personal healing.* A commitment such as this by the elders would provide an example to other people and it would be a necessary and beneficial undertaking for their personal well-being. (p. 38, emphasis added)

As these paragraphs point out, elders, as members of communities racked with abusive behaviours for many years, cannot be expected to have survived unscathed. It might also be wise to anticipate that some elders may have been deeply affected by their own inability, as an elder, to have prevented the cycle of abuse that afflicts so many communities. In that way, they may have special reasons to slip into denial.

It must also be said that some people called "elders" in their communities are distinctly less than saints, just as some of our church people have abused the trust their congregations placed in them. The elder charged with sexual assault whom I mentioned earlier is but one example. I recall another elder who was charged with a minor sexual touching; his power was such that chief and council refused to let us hold court, and fellow elders read passages of the Old Testament in support of his untouchability by anyone but God.

As a final concern, Carol La Prairie raises another issue: "(T)he age and physical limitation of some elders is another important factor which is rarely mentioned" (p. 112). In that connection, I regretfully report that of the three elders carrying the load in Sandy Lake, one has recently passed away, while another is seriously ill in hospital. When projects rest on so few shoulders, and those shoulders are advanced in years, the projects themselves become fragile. It may even be that the stress that comes from trying to be both an elder and a judge at the same time puts its own burden on those shoulders. I recall, for instance, that in one community the chief, the council, the community police and a significant number of community people all felt that the "leniency" of the elders was causing some preventable things to get out of hand. That unhappiness was communicated to them, along with requests that they get "tougher" on those who refused to respond. I was witness to their unhappiness as they wrestled with cases where accused people persistently thumbed their noses at every rehabilitative effort extended for their benefit. They knew that others wanted them to act in a coercive fashion in those cases, but they clearly felt that such coercion was not within their own understanding of an elder's role.

Using elders in a healing context, by contrast, may offer very differ-

ent dynamics. They can do what they are trained to do, which is to guide, encourage and nourish. They can learn from others involved in the healing processes about the complexity of the issues that face their communities, thus enabling them to contribute with a greater appreciation of today's realities. Their advice and guidance can be accepted or declined by others as they see fit, an option not present in a court. At the same time, elders are free to choose the issues and people they feel comfortable with, and to decline others. They can regulate the demands made upon them, rather than fall prey to an uncontrollable caseload. Not carrying the ultimate burden of success or failure with each accused, they might not be subject to the accusations of inadequacy that Obonsawin-Irwin report.

Even more important, elders involved in healing forums would be able to bring their personal knowledge of an accused out into the open, where it will be received as a contribution to understanding. This stands in direct contrast to the obligation imposed upon elders in our court system to recite their personal knowledge of an accused as a factor that requires that they not get involved in the proceedings, a manoeuvre that greatly perplexes all those who thought elders were involved because of such firsthand knowledge.

Finally, their ill-health or demise, while a loss to all, would not threaten continuance of the overall initiative.

5. THE NEED TO HEAL THE HEALERS

As the Treaty 3 report indicated, there are few people who have not been involved, directly or indirectly, in the inter-generational chains of sexual abuse and domestic violence that afflict so many Aboriginal communities. The recognition of that obstacle by the Hollow Water team sits front and centre in their efforts to bring healing to their community, for they acknowledge that they need healing themselves before they can hope to bring healing to others. In fact, significant effort has been put into that healer-healing over the last six years. As one team leader expressed it to me, "We are only now starting to see real healing coming to each other."

If that is their experience and their lesson, it might be appropriate to ask whether scarce resources should first be put into legal-system projects employing potentially un-healed people still mired in denial, or into projects aimed at building a core of people who are capable of facing the painful issues with openness, energy and hope. If Treaty 3 felt it necessary, in a written report, to encourage even elders to embark on personal healing processes, then we know that the problem of the un-healed healers is a large one, and one that should be considered in the design of community initiatives.

6. Achieving Disclosure/Penetrating the Maelstrom

I have long had concerns about the degree to which victims (and knowing family members) refused to disclose abuse to the criminal justice system. I suspect that a major inhibiting factor is that they do not wish to get involved with the adversarial processes of that system and its commonly punitive result. Even when disclosure is made, victims routinely refuse to come to court or to provide full testimony. As long as the response of the court is essentially limited to measures that feel punitive instead of restorative, I suspect that there will be continuing resistance on the part of victims and witnesses to come forward. Until they do, however, the real problems remain underground, festering, and carried from one generation to the next.

Hollow Water's concentration upon a healing environment that supports all parties, however, has moved community disclosure of sexual abuse "from a trickle to a flood." I was advised of a similar dynamic in a Yukon community after a judge agreed with a community-proposed, non-custodial plan for a sexual offender. Further, the woman who heads that community's justice project has indicated that since the healing approach was adopted there have even been instances of abusers coming forward to report their activities and seek help.

In short, we must ask serious questions about which approach shows the greatest promise of getting such issues out in the open, where they can be dealt with directly. If, as Hollow Water believes, the majority of community problems are ultimately traceable to sexual abuse, then getting disclosure becomes essential. If healing requires disclosure, and if at the same time a healing approach prompts disclosure, then there is extra reason to give healing a prominent place in community justice initiatives.

At the same time, it must be recognized that such healing projects do not take root overnight. It may well take years of prolonged effort to develop healing approaches that gain community confidence. In that respect, I remember what was said by one of the Hollow Water team members who has been with the project from its inception in 1984. She told me that in her view it is only now, in the spring of 1993, that they are starting to believe they have turned the corner as far as community confidence is concerned. She had tears in her eyes as she related how a young girl recently started her disclosure by saying, "Mom, I think we should have a talk with one of *our* workers."

If the emerging request from communities like Sandy Lake and Attawapiskat now centres on funding the kinds of healing approaches begun in Hollow Water some nine years ago, it might be appropriate to keep in mind the metaphor that involves putting the cart before the horse and then being surprised when not much movement results.

7. CAUSING A RETREAT OF THE EXISTING JUSTICE SYSTEM

Central to the justice aspirations of many Aboriginal communities is the desire to free themselves of the outside justice system, with all of its foreign processes, goals and players. It therefore becomes appropriate to ask which of the two approaches canvassed thus far is more likely to accomplish that goal in the shortest time.

Contrary to my first expectations, it can be argued that, even in the short term, healing projects have some potential to change the way in which the present justice system operates. Under the Hollow Water protocol, for instance, disclosure is now made to the team first, instead of to the police or another agency. Further, it is the team that first confronts the alleged abuser. If he or she is willing to work with them, it is the team which then escorts the abuser to the police for the laying of charges and the taking of a statement.

The police, in other words, have backed off in several critical respects, permitting the community to orchestrate its own interventions in ways it believes will better ensure the safety and dignity of all, as well as the beginning of a more productive long-term process. As I indicated earlier, guilty pleas have escalated dramatically, resulting in far fewer community members having to suffer the stress and trauma of adversarial trials.

The role of the probation officer has also changed, for it is now the team that prepares pre-sentence reports and formulates sentencing recommendations. Those reports carry significant weight with both the Crown attorney and the judge. The alternatives to jail developed by the team have given them options they did not have before. Instances of incarceration, especially of the lengthy variety, are down; so, advises the area Crown, are the instances of recidivism.

The team's efforts have permitted lawyers and judges to focus more of their time on the one thing they were especially trained for: conducting adversarial trials over disputed facts under stringent rules of evidence. As Richard Cummine, the Crown attorney for the Kenora District, pointed out one day, we never had a single course on sentencing at law school. Our skills, knowledge and mind-set are instead focused upon adversarial fact-finding. Thorough sentencing analyses and the creation of practical sentencing alternatives, such as have been created at Hollow Water, might permit us to focus more of our energies there as well.

Paradoxically, then, this healing focus has apparently resulted in a significant alteration in the roles and influence of police, Crown attorneys, lawyers, judges and correctional institutions, while at the same time accomplishing things they were unable to do. That alteration can only increase in scope as team skills expand and community confidence grows.

For those reasons, communities whose primary goal is to get the non-Aboriginal justice system out of their affairs as quickly as possible might be wise not to focus solely on negotiating issues of jurisdiction and control. In the longer run, a healing approach may provide an equally efficient strategy, for it aims at reducing the events that presently trigger the intervention of that criminal justice system. As those events diminish, the western justice system will retreat on its own, without the need for constitutional change, legislative enactment or jurisdictional transfers.

8. Respecting Traditional Aboriginal Understandings

This may be a peculiar topic for a non-Aboriginal person to embark upon, but I suggest that it must form part of the discussions between governments and those communities wishing to become involved in justice issues. I offer what follows only as an illustration of the kinds of issues that might be considered in examining various approaches to community involvement.

As it has been explained to me, traditional Aboriginal perspectives involve, along with a multitude of other things, two features that may be pertinent to these discussions:

- a dispersal of decision-making influence amongst many people, as suggested by a regular emphasis upon consensus decision-making, and a regular denunciation of such hierarchical decision-making structures as those created by the *Indian Act*; and
- a belief that people can neither be understood nor assisted so long as they are seen as isolated individuals. Instead, I have been told, people must be seen as participants in a large web of relationships. This understanding seems to be encapsulated in a document titled *Twelve Principles of Indian Philosophy* given to me by an Ojibway woman in my area, where the first principle is stated as follows: "WHOLENESS. All things are interrelated. Everything in the universe is part of a single whole. Everything is connected to everything else. *It is only possible to understand something if we understand how it is connected to everything else.*" (emphasis added)

Those two understandings may have great importance for the success of justice initiatives in Aboriginal communities, for if those initiatives do not reflect such understandings, then they may not feel appropriate to many people and therefore may fail to generate community confidence. It should also be clear that processes that feel appropriate to one Aboriginal group or community may not feel appropriate to another; particular alternatives will have to be grown by the people involved, respecting their own tradi-

tions, perspectives and realities.

For example, the concentration of decision-making power in the hands of a select few may be seen as inappropriate within some traditional perspectives, be they elders or any other group. While there can be little doubt that elder panels are seen as more comfortable than solitary white judges flying in from outside, it does not necessarily follow that they are seen as the most appropriate alternative. The Hollow Water program, with its formalized dispersal of decision-making responsibility to a team of nearly two dozen people, seems to demonstrate an allegiance to that perspective. The community confidence it appears to have engendered may stem in part from that allegiance.

Dealing with the second understanding, that which looks at the interrelatedness of all things, it has been stressed to me that justice in Aboriginal eyes requires looking well beyond a particular act and well beyond the individual who did it. Instead, the enquiry must have a much broader focus, looking at all the formative events leading up to the act and at all the other people who interact with each accused in the course of his or her life.

Again, Hollow Water seems to demonstrate this wider approach. The team, as indicated, works toward the creation of a healing contract to be signed by a large number of people, all of whom commit themselves to bringing about changes in their own behaviour toward the accused. The same dynamic is being played out in sentencing circles as well, where people come into the circle to discuss their relationship with the accused, to learn about the sources of disharmony in all of his or her relationships, and to suggest how they might change their own behaviour in order to restore that global harmony.

Both the Hollow Water and circle sentencing approaches appear to stand in rather stark contrast to the limited investigation undertaken within the western system, and to the limited number of people who bear the responsibility for providing the accused with future assistance. We tend to see acts as solitary events and actors as sole captains of their own individual ships.

It has also been pointed out to me that these emphases on shared decision-making and upon people-being-seen-as-facets-of-relationships are more than simple preferences. Rather, I've been told, they are seen as necessary perspectives within the traditional world view, a world view that has retained much more strength than many non-Aboriginal people might suspect.

The nature of Aboriginal languages appears to be part of it. As described to me, they are verb-based rather than noun-based. As a result, things are perceived not so much as solitary, separate things-in-themselves but rather in terms of their activities, with special emphasis upon their

constantly changing relationships with all the other things that surround them. As an illustration, I recall one court interpreter who advised that he could not translate "sister" (itself a relational term) until he knew whether it was an older or younger sister of the accused. It appeared that such knowledge was critical to a complete understanding of the accused's behaviour by the people of the community, given the duties between older and younger sisters.

As for the contention that our language (and behaviour) is noun-based, we need look no further than the courtroom. Both lawyers may be in full agreement as to the exact nature of a victim's injuries, yet there may still be a lengthy trial to determine whether to call the event an assault *simpliciter* or an assault causing bodily harm. It seems to be our unspoken belief that once a judge decides exactly what to call it, we will then know what to do about it, as though the name that is judicially attached to it has the power to determine how we should respond to it.

As a second illustration of the verb-based, relational understanding of things, I have recently been provided with various articles outlining the attention western scientists are beginning to pay to what they call Traditional Ecological Knowledge. TEK, as it is known, apparently has a significantly different focus than western science, for it looks primarily at the relationships between things in nature. By contrast, our reductionist and linear science looks primarily at how the component parts of things work. That difference is now attracting attention because the limits of our reductionist focus are being revealed by the worrisome inability of western scientists to predict ecological change, given the complexity of natural relationships. The analytical and predictive skills of traditional Aboriginal scientists are only now beginning to be appreciated.

The question some people are raising is this: if Aboriginal languages speak primarily in terms of the impossibility of understanding individual existence divorced from relationships, how can a justice system speak from within a different understanding? The Hollow Water approach appears faithful to the more traditional world view, both in terms of the dispersal of decision-making responsibility and in terms of the breadth of the investigation of, and response to, socially disruptive events. Approaches that vary from traditional understandings by concentrating decision-making responsibility in a few hands and by imposing a narrow focus on both investigations and responses may for cultural reasons have a more difficult time gaining community confidence and support.

9. Preventive and Educational Considerations

The goal of creating healthy communities requires more than responding in a reactive way to those already suffering within dysfunctional lives. It

also requires education and preventive measures to break the chain of intergenerational repetition. An emphasis on education was clearly important to the participants in the Treaty 3 consultations, as the following passage illustrates:

> One woman that was interviewed exemplified the acceptance of family violence as a way of life when she stated, "My husband beat me all the time and I lived through it—so these younger girls should be able to take it too."

Unhappily, this view seems to be alive and well in many First Nations in the Treaty 3 area. One participant stated that she remembered women being beaten in public and no one would intervene. She said, "I thought this was a normal thing and everyone did it" (p. 15).

Case-processing, by definition, is an essentially reactive enterprise, responding to a situation that already exists. While a healing focus also performs that reactive function, it may do so in ways that can also accomplish educational and preventive goals for the future as well. In the first place, the education required for the members of the team to be alert to signals of need and to design effective intervention has the effect of elevating the knowledge of the team members themselves. As the healing process draws in all those affected by particular cases, those extended circles of community people also gain insights into community problems. If the team also operates community workshops to increase community understanding, as is done in Hollow Water, the knowledge spreads further still.

A court, of course, can also say that such things are wrong and act in a denunciatory fashion. Unfortunately, that does not take place until charges are both laid and proven. A healing team, by contrast, can develop the skills and materials to take that message throughout the community on a regular basis and, just as important, do it in a non-threatening manner that promotes open and honest discussion.

Once again, it must be asked whether the case-processing or healing initiatives show the best promise of responding to this clear need for crime prevention through education.

10. THE RESOURCE AND TRAINING IMPLICATIONS FOR GOVERNMENTS

It is well known that governments across Canada are facing extreme financial pressures. Failure to take that reality into account in assessing the strengths and weakness of various justice proposals serves no one well. One of the strengths of initiatives focusing first upon healing may well come from the fact that they can draw upon people who are already receiving salaries as players in the healing field. I think here of child welfare

workers, NAADAP workers, community health representatives, mental health workers, band family service workers, nurses and nurse's aides, teachers and teacher's aides, and so forth. All of these people know the troubled individuals and families in their communities, and a significant amount of their history. What they often do not know is how to escape their separate chains of command and work together in a co-operative and sustained effort premised on a holistic approach to healing.

One of the originators of the Hollow Water project, for example, is now advising the Grassy Narrows First Nation in my region. As part of the preparation work, he has identified over twenty such people already employed in healing jobs on that reserve, and an almost identical number of outside professionals with reserve responsibilities. The task, as he described it, involves helping all of those existing people to be more effective. He described what he hoped to achieve:

- a co-ordination of their activities;
- pooling their knowledge of the people in need;
- convincing their superiors off-reserve to permit them to amend their established, separate procedures so as to accommodate a co-ordinated team effort;
- bringing each of them common training in all of the issues, many of which are presently within the exclusive domain of particular kinds of workers;
- bringing all of them sustained and effective resources to begin healing and supporting each other;
- requiring outside professionals to submit to community and cross-cultural training, as well as to "sign on" to the holistic team approach, before being permitted to play an active role in the community, and
- over time, finding ways in which justice-system players might accommodate approaches fashioned by the team.

It should be noted that between 1983 and 1988 the Hollow Water team organized some twenty-two community training sessions for its members, covering such things as Circle of Life Cultural Awareness, Suicide and Prevention, Nutrition, Team Building, Human Sexuality, Intervention in Alcoholism and the like. The focus of their training dollars stands in direct contrast to the request of those communities choosing to establish community courts for training in the workings of the western justice system, as is indicated in the Obonsawin-Irwin reports on the Sandy Lake and Attawapiskat projects.

Once again, it may be appropriate to ask whether scarce training dollars are better spent on developing healing initiatives that may ultimately bring about a retreat of criminal justice interventions as criminal events

diminish, or on learning about the intricacies of the western justice system. It must be noted that each of the Attawapiskat and Sandy Lake projects are now funded to the tune of $100,000 a year, and their most pressing request is for further funds, both for education about the existing justice system and for beginning work on the creation of what could have been funded in the first place: healing resources to which they can direct people as alternatives to custody or other sanctions.

Experience to date, therefore, seems to suggest that case-processing projects, no matter how limited in the range of matters over which they exercise jurisdiction, remain expensive in both their operational and training requirements, yet do not seem to avoid the need for developing healing resources to complement those jurisdictional gains.

CONCLUSION

I feel I must point out that I was once a staunch supporter of such initiatives as the Sandy Lake and Attawapiskat projects. In fact, there is nothing at all wrong with them, for they have improved a number of aspects of the justice-processing system. My concern is that, taken all on their own, they may not be as productive as other alternatives, yet they absorb significant resources from a shrinking pool.

To a large extent, I believe my thinking was trapped within the western paradigm of what justice was: a case-processing, primarily reactive enterprise composed of police, lawyers, judges, jails and probation officers. For that reason, I saw Aboriginal justice in essentially the same terms, with the same sorts of players performing the same sorts of roles, but modified in various ways to make them more comfortable for Aboriginal people. It also seems fair to suspect that many Aboriginal communities may find their thinking trapped within that paradigm as well, for it has been the only approach open to them for many years.

Largely because of my growing familiarity with initiatives such as Hollow Water, the Treaty 3 report and the development of sentencing circles, I now feel constrained to question whether that approach is the most productive one, both in terms of community aspirations and government capacities to fund them. The justice-as-healing paradigm appears to be gaining ground. For that reason, it may be appropriate for governments to raise the issue of these two paradigms with those Aboriginal communities embarking on justice discussions, and to join them in examining the consequences of pursuing one or the other.

In summary, I suggest that those discussions examine the two different approaches—and all the middle-ground approaches that might combine the best elements of both—within the framework of at least the ten questions I have tried to articulate:

1. Which approaches best avoid the stress upon project participants that inevitably flows when people in a small community try to assume the heavy responsibility of dealing with disturbed—and disturbing—people?
2. Which approaches permit the most concentrated focus upon the issues of sexual abuse and family violence, which a growing number of Aboriginal people point to as the two root causes of lesser problems such as substance abuse and youth turmoil?
3. Which approaches provide elders with roles appropriate to their age, station, experience and notions of propriety? Which approaches show the greatest promise of restoring them to the position of widespread community respect that they once enjoyed?
4. Which approaches best alleviate community suspicions about the motives of those making the proposals and, at the same time, best guard against abuse of the powerless by those in charge?
5. Which approaches respond best to the growing assertion that there is a need to heal the healers as a prerequisite to accomplishing the restoration of health to individuals, families and whole communities?
6. Which approaches are most likely to prompt an increase in disclosure, without which little effective intervention can take place?
7. Which approaches promise to be the fastest route to substantial withdrawal of the western criminal justice system from Aboriginal communities, while still providing protection for those who are now unable to protect themselves?
8. Which approaches demonstrate substantial allegiance to and respect for traditional Aboriginal understandings, and in that way show the greatest promise of inspiring community confidence? What are those traditional understandings and how must they be reflected in community problem-solving?
9. Which approaches can also provide the educational and preventive measures identified as being critical to long-term community health?
10. Which approaches are likely to provide the greatest bang for the smallest buck in this era of prolonged fiscal restraint?

No doubt there are other questions that might be asked as well.

In closing, I express my hope that this paper prompts thought and discussion both within government circles and within Aboriginal communities themselves. Without question, we need the best efforts of all of us as we try to chart productive paths for the future.