

# **Circle Sentencing of Aboriginal Offenders - Victims have a say.**

A paper presented by **NSW MAGISTRATE DOUG DICK** to The Office of the Victims of Crime Coordinator, ACT seminar titled **Innovation – Promising Practices for Victims and Witnesses in the Criminal Justice System.**

23 October 2003.

In opening my address, may I say Circle Court has left an indelible and positive impression on me and one which I am fully prepared to promote simply because it's well overdue and is certainly in the national interest.

By way of background, since the early 1960s, there has been increasing interest in new and different ways of doing justice. Part of this interest stems from a growing dissatisfaction with the ability of the western justice system to prevent crime and reduce the number of people in prison.

Circle Court aims to provide a more satisfactory, effective and appropriate outcome for all those involved including victims and the wider general community.

The trial has been underway for a little over 18 months. A national press release regarding the first sitting of the Circle Court stated:

*Nowra on the NSW South Coast heard its first Circle sentencing case early in February. The case involved a 28-year-old man charged with assault and malicious damage. The Circle consisted his family, the victim of the offence, respected community members and solicitors and was convened by the local magistrate.*

This brief account of what is a radical change in legal and criminal proceedings in this country either expresses disinterest or a complete lack of knowledge of what Circle Courts are, what they do, and what they are achieving.

It is tragically apparent that young Aboriginal males in some places have a greater chance of going to prison than finishing secondary school. Many offenders are at a turbulent stage of life.

The recognised shift to find alternatives to the historical approach to criminal justice has resulted in an open climate of initiatives right across Australia and indeed the world. It seems, and I like this expression, that we are all in the choir, but unfortunately are not all singing the same song.

The Nowra model was drawn together with reference to the many overseas experiments. Some Circle Sentencing trials in place overseas refer to a community consultation where the judicial officer does not attend or participate in the circle but receives and considers a sentencing recommendation from the circle. What we did was take on board, modify and revise various models to suit our own particular needs. We had to focus upon the relationship between the Court and the Aboriginal community. To encourage that community to accept ownership of what for all intents and purposes is a crossbreed form of law and order.

The introduction of Circle Courts in New South Wales represents a major policy shift in the criminal justice system. Circle Court is not an alternative to gaol. But if Circle Court produces that result it is a welcome outcome.

Today is significant because it is an opportunity to gain knowledge and understanding into what is happening in the development of the Circle Court. In fact, the credibility of the administration of justice depends upon the procedure being transparent and open to scrutiny.

The purpose of this paper is to give you an idea of the potential and the positive attributes of a system that doesn't merely recognise the law as a straight line where wrong doers are punished, a sentence passed, and invariably a pattern of re-offending put in place that ultimately destroys a person's chances of changing their behaviour. The circle promotes the notion of return, return to family, to community, to work and participation in life. Circle Court gives hope for indigenous people, indigenous offenders and victims of crime.

Inherently aware of history in the making, all the participants were approaching the challenges and opportunities, which lay before them with a sense of excitement, a certain level of trepidation, and may I say, a degree of reverence as well.

It would be remiss of me at this point in time, not to pay tribute to the Aboriginal Elders who have despite the historical backdrop and their own personal experiences with the Police and the judicial system, elected to play such a vital role in the success of Circle Courts.

At our first Circle Court I ignorantly (but in good faith) suggested that we arrange tables in a Circle to enable the proceedings to begin. Having already abandoned my suit coat and tie, it was another gesture at informality. An Aboriginal man in the group said, "*Hey Mr Magistrate, you're not sending me back to school, I don't wanna sit behind no desk*". The order for the desks was cancelled; a Circle of people formed and the first Circle Court was underway.

I give you this information because it symbolizes for many what that man, and other Aboriginal people, feels about the trappings and formalities of western institutions and in particular the legal system.

The system is entrenched with proprieties, rules and regulations that have always signified for Aboriginal people, their powerlessness and the power of white men over them. *I don't wanna sit behind no desk*, was a crucial objection because the removal of the desks was the removal of the overwhelming power of the western legal system.

Without a desk, a barrier, the proceedings would appear fairer, more equitable and less formal. A circle of people without a barrier between them broke down boundaries that have existed for over two hundred years. That small gesture was seen by many of the participants as the beginning of the success of Circle Courts.

There of course will be critics, those who proclaim the procedure creates one rule for blacks and another for whites. I expect those uneducated opinions to persist. However, proper liaison and discussion should ease concerns. It is hoped that through seminars such as this and by face-to-

face consultations, individuals and interest groups will be able to appreciate the potential benefits the community may reap. Later this morning I will read to you an account of Circle Court as experienced by a victim of non-Aboriginal heritage.

It is expected that many of the Circle participants will be new to the procedure and will be hesitant and shy. This is particularly the case with victims, especially victims of domestic violence. It is vitally important therefore, that an effective dialogue be nurtured so that at the end of the Circle Court deliberations a sentence is imposed that fits within current sentencing guidelines. Sentences reflecting tribal law and payback punishment are not considered or imposed. Nevertheless, the sentence should reflect social, cultural and legal factors. It is imperative that the Circle Court be alert to all these issues because it is undoubtedly true that some Circle Court participants bring with them immense distress and some prejudices.

It is with this in mind that I am reminded of an extract from a poem written by Henry Lawson in 1904 entitled "To Jim"

*"But O beware of bitterness  
When you are wronged my lad  
I wish I had the faith in men  
And women that I had!  
Tis better far (for I have felt  
The sadness in my song)  
To trust all men and still be wronged  
Than to trust none, and wrong."*

In deciding whether or not to hold a sentencing circle the regular Court is exercising a judicial function. That means that the decision must not be made arbitrarily, it must be made with reference to certain criteria. Those principles have been laid down in a Draft Chief Magistrate's Practice Direction.

An offender admitting to what he or she has done is only the first step. What the trial is looking for is an offender who regrets the conduct that led to the charge and is calling upon the community to help change

attitude and behaviour. We cannot expect a change in conduct until there is a change in attitude.

Aboriginal people communicate with people with whom they share kinship ties (even though the connection may be distant). Consequently, the message that the law aims to deliver may be more effectively delivered outside of the Courtroom, as we know it. I would like to encourage people today to think about the circle as a metaphor for cultural difference. Without the physical boundary of a table, desk, bench, microphones, western images carved in mahogany, colonial symbols and other paraphernalia, the Circle Court has come to represent a place of fairness where offenders may be encouraged within the safety of a circle to consider their offences and the effects on their victims. The circle itself has enormous significance.

In most Aboriginal communities the idea of circularity is a philosophy. Aboriginal history is seen as circular, as something that begins, develops, and returns, rather than something that ends with death. The circle represents the circle of life, the return to the land of things that pass. In a very real sense, the circle is the cornerstone of Aboriginal notions of creation.

Kinship ties, as I mentioned, are a critical part of social interaction amongst Aboriginal people. They can affect the manner in which an offender reflects upon the criminal behaviour. It is one thing for me as a Magistrate to convey the community's concerns; it is another entirely to have those concerns communicated by persons in whom the offender holds a deep-seated respect.

One of the potential benefits of Circle Court is that the Aboriginal community plays an active role in deciding on an appropriate response rather than have a sentence imposed from outside the community. Circle Court deliberations are typified as being a power sharing arrangement. It has been recognised in other models that if the community does not have confidence that the power sharing arrangements will be honoured, the prospects for the successful implementation of Circle Court are likely to be diminished. I can't over emphasize the importance of the Magistrate, Prosecutor & Solicitor allowing this to happen. In many respects this capitulation runs against our many years of legal training. Yet this is perhaps the most crucial aspect of promoting community ownership.

Whilst Circle Court is in progress, the Magistrate must at times act as a facilitator, negotiation broker, be the focal point of law and the final word on it. The Magistrate should comprehensively explain to each participant the purpose of the Court and the roles of individuals. Importantly, the Magistrate should actively and unmistakably illustrate a willingness to share in the sentence decision-making process.

Based on the unique experiences I have now had in Circle Court I make the observation that strength and confidence in the prosecuting role is of course essential, however, I believe there is no place for a prosecutor who is all passion and devoid of perspective and a capacity to apply cultural sensitivity. Whilst the Court is operating on a less formal level it is none the less a structured process in which the Magistrate ensures the integrity of the Court is preserved. The process validates an empowerment of the people.

A solicitor in regular Court is under considerable time restraints. The address must be short and to the point. Language must be appropriate for the legal system. A solicitor rarely refers to a victim as a victim. A solicitor stands in front of the offender shielding the offender and speaking for him or her. During regular sittings of the Local Court the Magistrate is told only what the legal practitioners think should be disclosed. Information can be severely vetted. In Circle Court however, subjects canvassed far exceed the matters a Magistrate would normally expect to consider. The offender's solicitor must take extremely accurate instructions and must frame submissions carefully because they lose control of them when the Circle takes over. In the Circle Court the offender is no longer shielded.

Significantly, for the victim, support persons are present to prevent a feeling of vulnerability and isolation. In Circle Court the victim is seen and the consequences of harm can be visually acknowledged. In a normal Court the victim is rarely referred to or becomes a disembodied abstract generally referred to as "the complainant". In Circle Court the victim is there, adding flesh and blood to police facts that in a normal Court are generally bare bones and without life. I am not breaking new ground when I recognise that victims of crime often rate their need for answers above their need for retribution and compensation.

The Magistrate must ensure the focus is first and foremost upon sentence. One must remain vigilant that the deliberations on sentence do not inadvertently become a discussion on rehabilitation as the primary focus. On occasions this has happened. That is not to say that rehabilitation should be understated or ignored but certainly the sentencing provisions of legislation place punishment and the safety of the community as higher priority. Having said that compassion, understanding and a capacity to be flexible are also attributes, which the Circle Court has come to exhibit.

Community representatives who have no knowledge of the offender would be of little use to Circle Court. They may even be conned by an experienced offender. It is precisely because they know the background, the culture, the strong points and the weaknesses that members of the offender's community can reach out in a much more effective way than the criminal Court.

The Circle Court gives the offender and the victim a patient and fair hearing that in the long run reflects community values. The sentence passed by the Circle Court must fall within what the Magistrate would ordinarily view as an acceptable penalty range. Sentences that are unduly harsh or undeservedly lenient will not receive the Magistrate's endorsement. This means we have not thrown out the essence of impartiality that comes with a Magistrate dealing with the case.

As a result of loss of legal filters there are more facts, more details, and a more accurate focus on what occurred and how it occurred. With more access to detail, the Circle Court considers causes and effects rather than just dealing with the dry matter of crime and punishment. In the Circle Court the Magistrate gives a rough outline of information and takes on the appearance of a person rather than a figurehead who will pass sentence.

The language of Circle Courts is not confined to the often pompous and incomprehensible language of the regular Court. The circle not only removes physical barriers, it also removes or tones down verbal barriers. It creates an environment that is more comfortable for victims who come to confront the offender. The language of the western legal system is generally threatening to the unfamiliar. It is often seen as a language of power, of blame, of accusation, of discrimination. The circle breaks

down the barriers of language not only verbal language but also body language.

The Circle, in removing the table, literally turns the tables and allows not just for a sentence to be considered, and passed – but in this process also demands that the offender be responsible for his or her actions. Even at this early stage of our pilot we have seen a change in attitude within the Aboriginal community. I am not here referring to offenders, but instead to the elders. A sensitive approach has fostered confidence as our pool of community representatives continues to grow. The Circle Court is held away from the Court House, it is held at various locations within various communities. It's potential for a positive outcome has enticed a number of community members to seek to become involved in future sittings.

The Elders who come from various Aboriginal communities have embraced the Circle Court as a serious opportunity to demonstrate their capacity for responsibly and consistently uphold the rule of law on sentence and in doing so have gained immense respect from the other participants in the Circle Court. The Elders have shown their preparedness to make the hard decisions and have continued to do so and in my view have served to support the justifiable continuation and expansion of Circle Court nationally.

In assessing whether to refer an offender to Circle Court I have no concerns if an offender considers it an easy way out. Because, put simply that is far from the case. We have even experienced the unexpected, that is, a victim protesting that the penalty of the Circle was too harsh. Sentences imposed by Circle Courts to date have fallen consistently in the heavier end of the scale of penalties. Those penalties tend to lend credit to the integrity of Circle Court.

In the normal Courts, the object is to pass judgment, to implement justice and to punish. The difference in approach of Circle Courts is monumental if we think about it. In Circle Courts the offender is brought into the proceedings thinking about the consequences of his or her actions as much as they are thinking about what is going to happen to them. I think this is a radical shift in legal protocol. The presence of community members incites shame and contrition. The offender is forced to think how his or her actions are representative, not merely of themselves but of the community at large. They become in this system part of the circle.

They cannot escape it. The circle is, in many ways, what contains them, their actions and their future. It is a powerful image because it can represent for the offender the continuity of life, the prospect of change and recovery, rather than just being a symbol of punishment.

The removal of what symbolizes western authority has been instrumental in creating a system that allows voices to speak and be heard, voices that are usually silenced. I don't see Circle Court as undermining the western legal system. I see it more as extending it, enhancing its capacity for fairness and justice. The Circle's support extends out into the community and continues long after sentence is imposed.

I may be starting to sound somewhat evangelical about what I consider to be the positive aspect of Circle Court. My involvement in this process has led me to seriously consider what makes this so effective. I am not suggesting it is always effective, but in my experience so far, the success of the system speaks volumes. I have seen habitual offenders stop offending. I have seen habitual offenders returned to their communities and become productive community members. I think this is because the Circle Court does not end in the Courtroom. Victims have been recognized. The circle continues to surround those who enter; encouragement, and the presence of community members, ensures the Circle Courts lasting impact. Hardened criminals are now being held accountable for their actions. I have lost count of the number of such people who have broken down in the circle. The processes had really been a life changing experience. They could no longer run and they could no longer hide.

The Nowra experience is unfolding in a way that is not reflective of other community involvement experiments. There are no hard and fast rules because one size does not fit all. We would be naive to think that the Nowra model could be taken from the shelf and dropped into a remote community with the same effectiveness. One must recognise the differing problems and life styles of the various distinct communities. In other words, it is important to recognise that the Nowra model cannot be considered a panacea for Aboriginal justice ills. Aboriginal cultures are not all the same. The huge difference between urban, rural and remote communities will make the task of settling standard operative guidelines difficult.

The strong desire to find ways that allow for increased victim and community participation in the process of justice is worldwide. It will be a long road. In relation to evaluation, the Peace Maker Court in Canada first sat in October 2000. His Honour Judge Mandamin of the Provincial Court of Alberta is of the view that it may take as long as 10 to 12 years before reliable appraisal can be undertaken. Nevertheless, the process of assessment has been commenced in NSW as a joint task headed by the Judicial Commission and Aboriginal Justice Advisory Council. The first report is due for release very soon.

Not long after we kicked off one of the respected community members sadly passed away. From the outset she had participated in Circle Court with vigour and enthusiasm. Her words of wisdom had the potential to influence and impact upon future behaviour. One passage that I now often quote was directed to an offender who was in some respects feeling sorry for himself and was hiding behind what he considered past injustices. She drew reference to the offender's own children and linked them to his offending. His outward demeanour visibly changed, he was humbled as her words sunk in, she said,

*My parents didn't teach me how to live.*

*They lived and I watched.*

*Your children are doing the same.*

Victims have an excellent opportunity to air their grievances and lay them squarely at the feet of the offender who has quite often had to face the victim and the harm they have caused for the first time. Genuine apologies have often flowed, hatred has visibly waned, a sense of closure for victims has prevailed and on at least two occasions victims and offenders have shaken hands emerging with a new understanding of each others circumstance.

In relation to punishment I would argue that the process is punishment, real punishment, a room of mirrors. Indeed it is perhaps more than a room of mirrors. It is about victims healing. Forgiveness is a part of that healing process, having a say, getting support, understanding why it happened, and having an opportunity to face the offender. That is justice not only being done, but being done well. I share with you part of a transcript of Circle Court deliberations. I hope you will see it as an example of more facts, more detail and greater focus. It illustrates the

removal of the Solicitors shield, the full exploration of previous behaviour and a victim that is both seen and heard.

**WE START WITH THE SOLICITORS SHIELD – THIS TRANSCRIPT HAS BEEN HEAVILY CONDENSED**

Solicitor *It is important for the Circle to know that my client suffers from depression, alcohol and substance abuse. He had an exposed upbringing in a domestic violence family with a father dependent upon alcohol.*

Elder 3 *We know about his childhood. We've known him his since he was born.*

**PROSECUTOR OUTLINES CRIMINAL HISTORY AND POINTS OUT THAT THE MAJORITY OF ENTRIES ARE ALCOHOL RELATED.**

Solicitor *But he had also run out of medication.*

Elder 4 *The system didn't let you down, you let yourself down. If you are running low on medication you do something about it, 3 weeks before.*

Elder 1 *Is this the first episode of Domestic Violence?*

Offender *Yes*

Victim Support *That's wrong.*

Victim *That's not true, he has struck me before and not always when he was intoxicated.*

Elder 2 *Domestic violence is not a part of Aboriginal culture.*

**VICTIM GAVE A DETAILED ACCOUNT OF PREVIOUS INCIDENTS WHERE SHE WAS THE VICTIM AT THE HANDS OF THE OFFENDER AND PARTICULARS OF ANOTHER INCIDENT NOT INVOLVING THAT OFFENDER BUT WHERE THE RESULT WAS A 5-YEAR GAOL TERM FOR THE PERPETRATOR. SIGNIFICANTLY, THAT OTHER OFFENDER WAS DUE FOR RELEASE FROM GAOL AROUND THE TIME OF THE SITTING OF THE CIRCLE COURT.**

Victim (continued) *I want to work out my problems myself. His attitude is get on with life and forget about it, but I can't forget about it and neither would you if it happened to you. How would you like to be taken out into the bush and told to*

*dig your own grave?*

Elder 4 *I need to sit down with you son and talk about a lot of things I know about that are not before this Court.*

Offender *I know.*

Elder 4 *You let yourself down son, don't blame anyone else. If you were running low on medication you should have done something about it.*

Solicitor *He wasn't taking his medication because his relationship with Mental Health is not good.*

MAGISTRATE STEPS IN TO RE-FOCUS THE GROUP ON PUNISHMENT.

Prosecutor *I acknowledge your medical condition but the use of alcohol lessens the force of the medication. The duration of the offence and the victim's knowledge of what you were capable of are matters of concern.*

Elder 2 *The victim has considerable emotional baggage, she'd been kidnapped.*

Offender *I only tried to help her with her problems.*

Elder 3 *You're not a counsellor how can you help her?*

NO ANSWER

Elder 3 *Well?*

NO ANSWER

Elder 4 *Have you been doing it for the whole relationship?*

NO ANSWER

Offender *There's no trust between either of us, I have no support from Mental Health, there is no plan in place, I'd run out of medication, I hit her out of frustration.*

Victim *When he's on medication he's a lot calmer.*

Offender *It was spur of the moment.*

Victim *But I won't put up with it, I don't want to put up with it anymore.*

VICTIM STARTS TO CRY

Elder 2 *With domestic violence don't forget the kids really suffer.*  
Elder 1 *You were depressed and alcohol is a depressant. You have poly drug use, and that's no good.*  
Solicitor *The Doctor says his behaviour is not surprising having regard to his brain injury.*

SOLICITOR TENDERS SOME MEDICAL REPORTS.

Elder 4 *This subject is very touchy, it's too rich for me.*  
Victim Support *It's not her fault, I know it's not all one sided but there can be no excuse for domestic violence.*  
Elder 1 *Domestic violence is not good for our community or your family.*  
Victim *I'm scared, that's why I run away.*  
Offender *I get a message from others that she is looking for me, but maybe the relationship is over.*  
Victim *When you hit me it hurts. It hurts. I can't put up with it anymore.*  
Victim Support *There is no excuse for assaulting your partner.*  
Elder 3 *This relationship is no good for her, she doesn't need this type of thing.*  
Victim Support *You don't know what baggage she has been carrying emotionally over the last 5 or 6 years. You can't just say forget about it.*  
Elder 1 *You have respect for the elders, you should respect your partner, this can't go on. Stop climbing into a bottle. You must realise the temptation will always be there to drink, but you have to resist.*  
Elder 4 *I don't see a future in this relationship.*  
Victim *I agree, I can't put up with it anymore. I love him, but I can't put up with it.*

MAGISTRATE ADVISES THE CIRCLE IN RELATION TO IMPOSING AN AVO

Victim Support *Yes, that's what's needed.*

Offender *I know it's over.*

Elder 1 *In my day if you hit your missus you had to fight her whole family. They'd be lined up and you would have to fight her father, her brother's her uncles and sometimes even her mother. It's wrong. It shouldn't happen.*

PART OF THE END RESULT WAS AN AVO WITH CONDITIONS BANNING CONTACT OF ANY KIND.

There is a need to send an unambiguous message to offenders and the general public alike that the conduct of offenders will not be trivialised. Nor will the Courts or the Aboriginal communities, with which the offenders identify, tolerate it.

The systematic approach currently in existence in the determining of guilt or innocence in our Courts is not what Circle Court remedies. I would submit that whilst our judicial system is not perfect the mechanism by which guilt or innocence is determined has not been the problem.

The problem has been that from the Aboriginal offender's perspective, the relevance of the sentence impacting on the offender as a consequence of their actions has not successfully been achieved and therefore did not act as the deterrent one would have hoped for. It took me some time to realise just what Circle Court is capable of achieving. In short, it is crime prevention that embodies victim recognition and support. Circle Court has the ability to heal.

I believe the Nowra Circle Court over time has demonstrated a capacity to do just that, to make the sentence relevant and mean something.

At the close of another Circle Court one elder said,

*You don't learn responsibility from outsiders. You learn it from family.*

Circle Sentencing has taught the Aboriginal elders about the law and the seriousness of offences. Elders are coming to realise that laws are in place for the benefit of the entire community. I have come to realise that the Aboriginal community due to cultural beliefs does often not share what the Court may perceive as serious. Both the Court and the

Aboriginal Communities are gaining a greater insight into each other's concerns and interests.

Before I close, I would like to make one very important observation, the past has moulded the present we now have the opportunity to mould the future. As an example I would like to read a short paper by Patrick Tynan, one of the first victims to experience Circle Courts.

#### PAPER ANNEXED

Children are often the unrecognised victims, but in Circle Court that is not the case. Perhaps a little more touching than Patrick Tynan's account, is a letter written by an 11-year-old son of an offender.

#### LETTER ANNEXED

I am sure you will agree that its impact upon the offender was far more effective than anything I could have said.

Finally I'll leave you with words of one of the Elders, I think they're quite significant, he said:

*"This is not white man's law anymore, it's the people's law."*

I ask you to consider is this not what we have always hoped to achieve?

\* \* \* \* \*

## **ANNEXURE**

Good Morning, my name is Patrick Tynan and I operate three retail businesses on the South Coast of NSW. Our local Magistrate, Doug Dick, has asked me to briefly convey my feelings and impressions of circle sentencing and how it has affected myself.

My retail businesses are consumer electrical and electronic goods, (TV, DVD, Fridges, Washers etc), so they are a prime target for break-ins, shoplifting etc. Midnight shoppers are a fact of life for me so it is not unusual for me to spend the early hours of some mornings cleaning up broken glass, repairing smashed displays and counting the cost of stolen or damaged goods.

As a general rule, in relation to criminal activities, I'm from the hang-em-high brigade. History and perception for me is that the perpetrators are very rarely caught and when they are they are usually let off with a slap on the wrist. So my pre-disposition is not one of tolerance for any criminal offenders.

However, one perpetrator who was caught and proven guilty for a break in one of my stores opted for circle sentencing instead of the traditional courtroom justice. As one of the victims of this person's crimes I was asked to attend the circle sentencing procedure to present how this person's actions affected my staff and myself. I was told that my role was to talk face to face with the perpetrator and to give the victim's perspective on his actions.

As the date for the hearing approached many thoughts went through my mind. Was I nervous? Yes I was, I hadn't been inside a court for twenty-five years. I also thought that by attending and commenting unfavourably to him would I be inviting retaliation at a later date?

Truthfully at the time I was unsure if there would be any repercussions against my business, but what I did want, was to see him put away, to be made to pay for his actions.

However, despite all my feelings and uneasiness and my desire to seek retribution I was still very dubious of circle sentencing and its impact and effectiveness. I imagined a watered down process where the perpetrator would be given minimal penalties that would see him inconvenienced in the smallest way possible. I thought it would be a joke and a waste of time.

At the place where this process was to occur I saw for the first time this person who had caused a lot of damage to my shop. I also saw his new partner and their young child who were there to support him, but I felt very little compassion for or understanding of his predicament.

I was sitting virtually opposite this offender who at the time of the offence had instigated the eighth breaking, in the previous twelve-month period. Although I had insurance, each break-in had cost me an insurance excess payment of \$1000 and my premiums had jumped substantially because of my claims history. So here was this guy who represented those that had cost me \$8000 after the insurance had paid their bit, plus eight nights of very little if no sleep at all as I cleaned up their mess and

bigger insurance premiums to look forward to in the years to come. I was primed and ready to let fly.

As to the process itself, the Aboriginal elders were very direct and unrelenting in their condemnation of his actions. They talked to him about his activities on the night the offences were committed and they also dwelt on the impact his actions had on the wider community, both Aboriginal and non-Aboriginal. He accepted that his actions had also endangered a number of lives, but at the time he claimed he had very little recollection of what had occurred on the night in question due to his intoxicated and drugged state.

As a victim I had the opportunity to state my case, to express my feelings and to offer my impressions of how his actions had impacted my life and business. I felt comfortable to be able to say what I wanted. I did not feel threatened or under pressure to go harder or to go easier. The participants allowed me to state it as I saw it. The Aboriginal elders took up the concerns of each of the victims to the offender to reinforce that they felt he had let down his heritage and his community.

The offender apologised for his actions and accepted that he had a debt to pay to the community.

As well as the police prosecutor, there was a police liaison officer for the Aboriginal community present. He also gave his opinion on where his life would head if he did not change his ways. He knew this young fellow's family and asked him if he knew how they would feel knowing all that had transpired.

When the time came to the actual sentence there was a long discussion on what would be suitable for all parties:

- What would the victims accept as justice being dispensed?
  - What would the police see as being reward for their efforts?
  - What would the courts see as being within the legal parameters?
- And,
- What did the community see as the correct penalty for the crimes committed?

The offender himself also had the opportunity for input, but in this case he was willing to accept the elders decision. So finally it was made by the elders but with input/acceptance from the victims.

By the time it was over, I was satisfied. As a victim I had my day in court, albeit a circle sentencing procedure, I felt justice had been done as a criminal was suitably and demonstrably treated, as one would want them to be. I felt the system had worked. To this day I'm confident the offender was remorseful.

In retrospect, why had the system worked on the day I was involved with it? It all came down to one thing. Everybody had wanted it to. The Aboriginal elders took their role very seriously, the police prosecutor and the aboriginal liaison officer were willing contributors, the attending magistrate gave the legal input as and when required and ensured correct procedures were followed, but most of all, the offender wanted it to work. At the end of the day, if the offender is one of the willing participants then there is hope that it will work. He had stated he had reformed and that he had more responsibilities now. He not only displayed a willingness to accept the decision but he also showed respect for the

process that was taking place and as such he accepted the judgement without question.

Since that day, two odd years ago, I have had little contact with any of the participants from that hearing. I'm still regarded as the victim, I still like to see the criminals punished but I am also the first to admit that I am still happy with what happened that day. I genuinely feel that everybody benefited from that circle sentencing procedure.

I feel justice was done and was enforced. I feel that the local community both Aboriginal and non-Aboriginal gained from that day. I feel a young person who lost his way for a period of his life found it again.

So as a victim I was, and still am, satisfied with the result.

ANNEXURE

I would ~~be~~ like  
my dad to

1. stop ~~also~~ drinking
2. stop ~~stop~~ showing up  
in the middle of the  
night drunk
3. stop calling people names  
and ~~at~~ threatening people
4. stop ~~still~~ stealing my  
money
5. stop hurting my  
mum

~~and~~ I want to feel  
safe with dad

## **Acknowledgements:**

This paper expresses thoughts and procedures that have been adopted from extensive readings and lessons learnt in practice. Others have spoken or written on similar topics on previous occasions. This paper contains some original developments and, in some cases, I have borrowed shamelessly from my readings because those readings have shown means and processes that could be applied without re-invention. As a result the Nowra experiment reflects many diverse and wide-ranging experiences. I do not claim this paper as my own. I am indebted to the following persons for their valuable contribution.

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