

MANON FALA

ADULT PRE-TRIAL DIVERSION COMMUNITY PANELS -
WOULD THEY WORK IN WELLINGTON ?

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Abstract

This year the Wellington-based Crime Prevention Unit¹ (CPU) provided funds for three pilot schemes involving community panels for adult pre-trial diversion. Only one of the schemes, at Hoani Waititi Marae, in West Auckland, was hearing cases by June, 1996. This paper examines the community panel concept.

Since one of the objects of the panels was to provide a more culturally balanced system of justice, this paper focusses on ethnic minority communities, specifically the Pacific Island communities, and their views of what would be needed if such schemes were set up in Wellington. A range of views of Wellington Pacific Island community people are presented. In the main they show a wariness about the lack of preparation and maintenance work in the past from groups and agencies setting up such consultative groups.

This paper argues that as much work must go into the preparation for the panels, e.g. in the community consultation, and selection of panel members, as into the planning of how they should operate. Hoani Waititi Marae is an example of a highly organised and cohesive community with experience in rehabilitative programmes, yet its experience illustrates some of the practical difficulties for panels such as a funding shortfall, the big demands when supervising divertees, and getting victims to attend hearings.

15,295 words

¹ The Crime Prevention Unit is located in the Department of the Prime Minister and Cabinet. The Department provides advice to the Prime Minister on policy, administrative, and constitutional issues, and provides secretariat support to the Cabinet and the Executive Council. It contributes to the effective co-ordination of government departments and tests the quality of the advice coming from government departments to Cabinet. The unit's main three roles are: a) to be the principal advisor to the Government on crime prevention strategies; b) to carry out the planning, co-ordination, monitoring and advisory functions related to implementing and maintaining the crime prevention strategy; and c) to ensure a co-ordinated and co-operative approach between Central Government, Government departments, iwi, local government, Pacific Island and other community groups that will allow the development of, and support for, specific crime prevention initiatives. From the crime prevention unit - a fact sheet.

I INTRODUCTION

Adult pre-trial diversion² was originally seen by some police officers, as "a slap on the back of the hand with a wet bus ticket"³ and even now it is seen by some victims of offending as a soft option.⁴ However, it has now been operating for nine years and despite some criticisms, seems widely accepted by authorities and the community. Police and judges attribute lower rates of recidivism and fewer s 19 Criminal Justice Act discharges to diversion.⁵

The CPU trial of three pilot schemes this year to bring in community panels to create programmes for divertees may be seen as an effort to counter the major criticisms of diversion: that there is a lack of public accountability and potential for abuse of process since the police at present control the selection of divertees, their programmes, and if there are programme breaches, sending them back to court.

The police responded to criticisms of lack of public accountability and lack of national consistency by producing national guidelines⁶ on diversion in 1994, but diversion essentially

² The purposes of diversion set out in the 1994 police national guidelines are:

- a) prevention of re-offending
- b) avoiding the first criminal conviction
- c) providing another chance for the offender
- d) to help the offender's rehabilitation
- e) to use community resources to assist rehabilitation e.g. counselling for anger management, drugs, alcohol, grief, marriage guidance, and sexual dysfunctions.
- f) to ensure that appropriate reparation is made to the victim of the offence.

³ From interview with Police legal adviser Chief Inspector John Crookston at Police National Headquarters, March 25, 1996.

⁴ Interview with Steven Lau, then president of the Wellington Chinese Businessmen's Association, June 14, 1996.

⁵ Interviews with Judge Neville Jaine, John Wills, John Crookston, Paddy Darroch, and report commissioned by the police and written by Christine Laven, 1996.

⁶ The 1994 Police national guidelines criteria for diversion are:

- a first offender
- b special circumstances where the person is not a first offender e.g. those with a moderate to serious list of convictions but who have demonstrated a real attempt to keep out of trouble and have then lapsed, where the direct and indirect consequences of a conviction would be out of all proportion to the gravity of the offence and where the conviction would have a serious effect on the offender's future, and those who had had a head to head battle with police for years but may benefit from a demonstration that police are prepared to vary the game plan to attempt to break the cycle of confrontation and negative attitude.
- c The offence is not serious. There are no hard and fast rules, each case must be examined individually and considered on its merits. Offences which are not to be considered for diversion are: all purely indictable offences, breaches of court orders, Excess blood alcohol offences, family violence offences may be in exceptional circumstances and then only with the approval of the District Commander or his or her nominated Commissioned Officer who must be satisfied that the terms of the family violence policy have been complied with.
- d Admits guilt and shows remorse. The fact an offender has previously exercised his or her right to plead not guilty prior to accepting full legal advice should not be a bar to diversion if the offender meets the other diversion criteria.
- e The victim's views must always be sought and serious consideration given to his or her opinion before the decision to divert is made. The exercise of the discretion to divert remains with the police.
- f The Officer in Charge of the case should always be consulted and serious consideration given to his or her views.
- g The offender must agree to diversion.

remains a hidden process without external checks or public scrutiny of the programmes police set.

The aim of the panels is to offer those divertees who would rather be heard by a community panel a cultural component at the time of creating the programmes. Panelists with wide community networks will have knowledge of the culture, customs, and language of the divertee, and also of the people, agencies, and community programmes in Wellington best suited to help in his or her circumstances. The police diversion co-ordinators are already sending divertees to cultural and welfare groups such as the Samoa Aotearoa Unity Trust (SAU) in Newtown for counselling and community service.

In the mid 1980's the police in the Wellington area used community panels to create programmes for divertees who chose to sit before them.⁷ The demise of the panels due to over-commitment by community representatives leaves lessons for those attempting to revive the idea now.

II THE NEW PILOT SCHEMES - THE IMPETUS AND LEAD-UP

Inspector John Wills⁸ chaired a diversion focus group in 1993 as member of the policy unit of Police National Headquarters.

One of the ideas the group came up with was the possibility of introducing involvement of whanau and other community members as a standard practice across the country. That was borrowing heavily on the family group conference (FGC) concept. He said:

⁷ From interview with Senior Constable George Ulyate, Porirua Diversion Co-ordinator, June 20, 1996.

⁸ Inspector Wills is currently on secondment to the Ministry of Justice as a senior policy advisor in the Strategic Responses to Crime Group. From interview on June 19, 1996.

The panel idea germinated in the 1991 Cameron and Young Report⁹ and the focus groups picked it up. They also picked up on the need for wider involvement to remove the pressure on diversion coordinators, because they are out there selecting people, doing interviews, trying to come up with work opportunities for them, may be trying unsuccessfully in some cases to tap into health, housing, educational and labour resources, and it is just better to have a pool there.

The CPU provided the initial funding to set up the community panels, and to run them for the first year but it was up to the groups to find sponsorship to sustain themselves after that. Mr Wills said sponsorship was a novel idea and was not just limited to private enterprise, or to cash grants. It could also require active participation of the local representatives of agencies to give their time and help gratis. He said:

As with anything in the community that is reliant on volunteers, there is the potential to wear out your welcome. If they can get them up and running, and well maintained, and have the support of the key Government agencies within each area they are operating in, then they will run well. But that requires all those agencies to subscribe to the philosophy of these things.

Inspector Wills said that education of the public was needed as well as training for panelists.

He said:

Training would involve a broad brush approach in the operation of the scheme: privacy, confidentiality principles, aims and objectives of the scheme. Most New Zealanders are horribly punitive and would rather see offenders banged up in jail, than have valuable community resources applied to them to ensure they did not reoffend. Diversion is still seen by many people in the community as a soft option.

Sarah Wylie, research officer with the CPU,¹⁰ said that the three pilot schemes were in Auckland, Rotorua,¹¹ and Timaru.¹² Hoani Waititi had been operating since March and diverted about 3 to 4 offenders a week.

⁹ "Adult Pre-trial Diversion in New Zealand," Warren Young and Neil Cameron. Young and Cameron Policy and Research Consultants, Wellington, 1991.

¹⁰ From interview On June 10, 1996. The CPU was set up in September, 1993.

¹¹ Sarah Wylie said Rotorua had a safer community council putting forward the design for it and tendered for community groups to deliver it. It will probably be a bi-cultural model since a lot of people involved were from Te Arawa.

¹² Sarah Wylie said that Timaru had few minorities and would be mainly Palagi. The panel was mainly professional people from the Department of Corrections, New Zealand Employment Service, and the Children and Young Persons' Service.

The time frame for the panels had slipped - all were to have begun by the end of March. The CPU's aim was to test whether the panels added value to the police diversion model. The police would still be heavily involved, because they were the gate-keepers of diversion.

Police legal advisor Chief Inspector John Crookston¹³ who drafted the diversion national guidelines said that at first there was a good deal of negativity towards diversion and initially the scheme had to be sold on the basis it was for first offenders and a very narrow range of offences only. Now it was generally accepted it could be extended to other offenders, and more offences. The idea of community panels was to bring in a wider sphere of experience. The previous panels held in the 1980's had principally fallen down because personnel had changed or people were over-committed with community work, he said.

In 1991, Cameron and Young¹⁴ noted that a few police prosecutors had begun to incorporate an element of community justice into the scheme by getting community members to determine the diversion programme and supervise and take responsibility for offenders during completion of the programme.

If the new schemes are to succeed, they must be sustainable, well resourced, and thus not depend on any one individual for their operation. It seems the earlier community panels began with good intentions on the police and community's part, but failed because panelists were over-committed to community activities.

¹³ See n 3.

¹⁴ See n 9.

A Operation of the first scheme: Hoani Waititi Marae

The first pilot scheme¹⁵ to be operating, on Hoani Waititi Marae in West Auckland, seems to be going well,¹⁶ but it also highlights some of the practical problems panels will have to deal with. It is submitted that Hoani Waititi is an excellent model for other marae-based programmes. However, it must be acknowledged that the success of their efforts must be attributed in part to the cohesion and expertise of this particular marae whanau. Hoani Waititi is known in Auckland for the success of its work-based programmes.

The pilot's target groups are:

1. Maori offenders diverted from the Henderson District and Youth Courts.
2. Dealing with families at risk that are subsequently identified through the clients.

Manawhakahaere Te Whanau Awhina, (project chairperson), Logan Rupuha,¹⁷ is manager of the marae staff and a panel member. He said the marae gained approval to run as a pilot scheme in January 1996, but the people did not feel that they were ready with training and procedures in place. The first case heard was in mid-March and now about two cases per week are held on the marae. He said:

The scheme is working extremely well, but it is damn hard work. Particularly the monitoring of it - putting someone into a programme and checking that they attend.

¹⁵ Te Whanau Awhina's project proposal said the project's aims and objectives are:

1. To conduct a programme of restorative justice for the Department of courts through the diversion programme.
2. To provide support for Maori who are diverted from the Henderson District and Youth courts.
3. To provide those persons with the necessary direction to ensure they do not progress from casual offending into a criminal lifestyle.
4. To provide an effective follow-up service for the client by linking them with appropriate social service providers or community groups.

¹⁶ The marae's project proposal said the project seeks to provide a Maori dimension in dealing with Maori who are considered appropriate cases for diversion by the Henderson District and Youth Courts. It said, "Background enquiries in some cases of diversion may provide an early indication of likely further offending and there is a need to provide the opportunity and support to move away from a life of crime. At present the diversion schemes have limited resources and time to address the wider issues of offending. In Waitakere there is a strong Maori support base in the city which is clearly under-utilised in helping to address Maori crime. District Court Judge Coral Shaw supported this move. Hoani Waititi marae was in a unique position to work with appropriate Maori who are diverted from the courts as they established community networks and a solid working structure."

¹⁷ Mr Rupuha says his experience as a former post master for 25 years stands him in good stead as a manager. From a telephone interview on August 7, 1996.

Panellists were selected for the breadth of their work experience and their community networks. The marae whanau also works with other groups e.g. the Waipareira Trust which has training programmes the marae can send its people to. Mr Rupuha said:

We have kaumatua and kuia (male and female elders) so that we can call on their wisdom. We have a detective senior sergeant who is one of the marae whanau and of course he has knowledge of police procedure. Other panelists we have include a qualified counsellor, an ex-policewoman - she too has knowledge of police procedures, and a whanau member who runs alcohol counselling and is responsible for an anti-drug campaign. She is valuable when we are dealing with people with drinking problems.

Mr Rupuha said that there are 21 potential panellists and the marae used 5 per case because that was a workable number. He noted that if a divertee was a young girl who would find it daunting coming on to a marae, then it was best to have as many females on the panel as possible, and particularly kuia, who brought wisdom and understanding to make people feel at ease.

Almost all clients were unemployed and had got into trouble because of sheer boredom. There was also a lot of illiteracy. Clients wanted to work, but had not got the necessary skills, so they were put on programmes on the marae and through the Waipareira Trust.¹⁸ Mr Rupuha said:

One client we slotted into an art and design course in AIT - he was brought before us for tagging and through talking to him and getting him to draw we saw he was an extremely good artist. We wanted him to pursue that through a course. He is now going through beautifully and is enjoying it. He finally feels he is worth something.

Some of the diversion clients have never had the opportunity to know their Maori background and culture so the marae puts them into TOPS programmes on the marae and they learn skills e.g. use of the taiaha, (long club) which demands strict discipline, te reo (the language), whakapapa (genealogy), powhiri, (welcome, opening ceremony) assisting with cooking and serving food to marae visitors, tikanga (custom, obligations), and protocols. The marae also runs a drivers' licence programme. It is not negotiable - we slot them into programmes and they apply themselves until they all get their licences.

The marae focuses heavily on training and less on punitive action. Mr Rupuha said:

¹⁸ Mr Rupuha said the Waipareira Trust had courses in automotive skills, screen printing, and panel beating.

Others need a wee bit of punishment and are required to do community service over and above the programmes we set. If someone has a big complex and there is a lot of work to be done to change him, if the attitude has been quite stink throughout the interview, we think, 'Righto Mr, you did something wrong and now you are going to do something for the community. So the person will do some work for the kaumatua and kuia e.g. washing windows and mowing lawns.

The marae whanau met regularly with representatives from the Ministry of Justice, the judiciary, the police, and the Department of Corrections. Any cases the marae did not think it could handle would be referred back to court. The marae received \$60,000 in 2 payments for the entire year. The money went from the CPU to the Safe Waitakere Community Council to the marae. Mr Rupuha said:

We have a problem with not enough funding. We raised this at the last monthly meeting. The funds are insufficient for the amount of work, the co-ordinator was not being paid enough. We have asked the police if they have any spare change.

The police senior sergeant who is part of the marae whanau had diversion panel members spend weekends together getting training about dealing with clients and how to run the panels. There was about three and a half days' training and additional sessions since then. Many of the panelists already had knowledge of the courts and justice system.

Unfortunately, so far no victims, except for the mother of one of the clients, who was victim of his crime, had attended the marae-based hearings.

Mr Rupuha was not sure why this should be. He said one victim had said she did not want to come along because she was afraid to confront the offender. She wrongly thought the offender was a big, burly, bearded gang member and was frightened by that image. He said:

We were going to take the client to her with a letter of apology. He wanted to personally apologise because he was remorseful. I don't think it is the fact the hearings are marae-based that discourages victims coming along. I think the victims are afraid of facing the offenders.

Mr Rupuha said there were some cases he felt ought not to have got to hearing. Two young school girls had been caught shoplifting and the police diverted them to the marae. He said:

The girls were shaking like leaves. They were good girls who had never stolen anything before in their lives. One of them had composed the music for the secondary school competitions. They were distraught after being spoken to by the shop detectives, the police being called and the fear of court appearances. They slipped up, but the matter should have been dealt with at the store by the detectives - a growling and a two-year ban from the store. It must cost an awful lot of money to put them through this process. Better to deal with it early on.

Despite the commitment required of panelists and the work monitoring divertees, the scheme was running smoothly and Maori and non-Maori divertees were accepted. Mr Rupuha concluded:

It is hard work, but it is going well. We have been really pleased with some of the people we have managed to turn around and to stop young people sliding into a life of crime. It is wonderful to have this on the marae.

John Wills¹⁹ said that the marae-based schemes did not constitute a separate justice system, but rather were the application of Maori values and principles within the acceptable bounds of the justice system.

He said that Hoani Waititi Marae's scheme showed the success or failure of the panels depended on having someone who was a driving force behind the scheme. He said:

(Dr) Pita Sharples is the most invigorating person to speak to. You cannot help but be uplifted when you have spoken with the guy. There are a lot of people working with him and some of the local judges are right behind the scheme.

Mr Wills said that Police Superintendent Rererangi Rangihika, who was involved in the Hoani Waititi diversion panel, had tried to start a diversion panel privately, but that it collapsed when Mr Rangihika left. Mr Wills said, "This indicates to me unless you have a person who

¹⁹ See n 8.

will continue driving then the thing will die. That is a concern I have with the community diversion panels, who will remain the driver ? Hopefully the diversion co-ordinator."

B Funding and corporate sponsorship of the schemes

Bill Kaua,²⁰ chairman of 25 tribes joined together under an umbrella in Wellington, and community liaison officer with the CPU, said he worked specifically with territorial local authorities and iwi (tribes). He stipulated to territorial local authorities that if they were thinking of setting up safer community councils they must consult hapu (sub-tribes, clans) who are in that area. He said, "A lot of our people are falling off the edges and forming the not so nice bits of crime statistics. It is imperative these bodies consult with iwi or hapu to ensure participation of those groups otherwise it is no use from our point of view."

The CPU promoted Safer Community Councils (SCCs) and had some funding. Once community panels were up and running they were autonomous. The SCCs had to focus on the CPU's 7 crime prevention strategies.²¹ The CPU was there for advice and support, but only intervened if a group was going away from the 7 strategies. Panel groups were required to budget for evaluation as part of their project description. He said:

If the programmes are successful we want to promulgate them throughout the country. Our budget is not a big one. The money we have is used to kick-start these groups. The secret of success is that they have got to continually look for co-funders on the local scene from other Government agencies, the private corporations e.g. Mobil, Telecom, those sorts of people. They know that our project funding is not here forever and a day. We can perhaps do a programme for two years, and then they have to find their own funding. After we give them funding, they have to get back to us with a report and a certificate of expenditure, and they have to be sure the mechanisms are in place to be accountable to their community.

Community panels would succeed if they stuck to the kaupapa (reasons, objectives, goals) and if they continually threw the net out and brought people in to help, Mr Kaua said.

²⁰ From an interview on June 17, 1996.

²¹ A CPU fact sheet says these are:

Supporting at risk families, reducing family violence, targeting youth at risk of offending, minimising the formal involvement of casual offenders within the criminal justice system (diversion), developing an approach for the management of programmes that address the misuse and abuse of both alcohol and drugs, addressing the incidence of white collar crime, and addressing the concerns of victims and potential victims.

III PROBLEMS WITH DIVERSION

Interviews with police, and community people reveal a range of concerns about diversion and possible solutions.

John Crookston²² said that the 1994 police guidelines on diversion were a direct response to the Cameron and Young Report's²³ conclusion that the scheme should be left in police hands, but that published guidelines open to public scrutiny were the best way to ensure adequate police accountability for the operation of the scheme.

The major concerns Cameron and Young raised in 1991²⁴ and which are still being expressed by community leaders and lawyers as criticisms of the scheme today are:

- a) the potential for abuse of process because of police control of the diversion system.
- b) the striking variations from one area to another in almost every aspect of the scheme, including serious differences in the nature and severity of the programmes imposed.
- c) offenders and victims tend to experience diversion as a process that is run by the police, and which they have little ability to alter.
- d) net- widening in the sense of a) first offenders who would probably previously have just been warned were now being prosecuted, taken to court and diverted, and b) some diverted offenders were more severely penalised than if they went through the court process.

Bernard Jervis,²⁵ Wellington Manager of Community Corrections, Department of Corrections, expressed concern about possible abuse of process by the police. He said:

²² See n 3.

²³ See n 9.

²⁴ See n 9.

²⁵ From interview June 14, 1996.

My concern about diversion is that it has the potential to give power to the police which in my view, they should not have. It allows them to become judge and jury. The police decide what the programme is, who will be on it, how they will pay reparation, and indeed we don't know the process they apply. In a sense it is not public. If someone goes to court it becomes public. I suppose that is the concern, are there powers being exercised which may be all right and may not be alright? Are there any civil liberties at stake, or human rights being abused?

The Whitireia Law centre lawyers Mark Graham and Bill Bevan²⁶ both felt some cases ought to have been diverted because they were minor.

Mr Bevan said that one example was an assault by a woman on her partner. A local lawyer told Mr Bevan it was a waste of time asking for diversion for domestic violence. The woman, who had called the police in the first place, ended up being charged with assault.

Mr Bevan said that another charge he thought should have been diverted was one-off instances of theft as a servant, which could involve very small amounts of property. He said:

I was told there was no way they would offer diversion because it was such a serious breach of trust. In those circumstances the person is fired, and that in itself is a huge penalty. To go ahead and get a criminal conviction for theft as a servant seems unfair. I thought diversion would be a runner, especially where the boss agrees to diversion, and the person pays back the money taken. I cannot see it as any different from shoplifting. Porirua police said they would not consider it - they saw theft as a servant as a special type of dishonesty.

Mr Graham said that it was sometimes hard for lawyers to advise people on whether diversion was available to them as the police were quite keen to preserve it as their decision. He said, "I get the feeling they do not want people to predict what their position will be a lot of the time. It gives them room to move."

Lea'ula Sa'u Samuelu,²⁷ a Samoan probation and community liaison officer in the Department of Corrections, said that the rationale behind diversion was good, but he had problems with the process of offenders admitting guilt to police and then going into diversion. He said:

²⁶ From interview June 13, 1996.

²⁷ From interview June 19, 1996.

In any criminal justice system a court of law ought to hear whether a person is guilty or not. To admit responsibility or guilt to a police officer is not my idea of justice. People who admit they are guilty go to the diversion scheme. Whether or not they committed the offence is another issue. I would like to see people admit guilt in a court of law first and then have the police say diversion is possible.

Fijian community leader Sai Lealea²⁸ said he would like to see the community panel come in earlier in the process to advise the police on selection of divertees. He said:

I would hate to think that the panel idea is just the police offloading some of their work. It is good if police are incorporating cultural input. What I would like to be involved in at an advisory level is the selection stage. If the panel are not involved in selecting people what is the point of this ?

The panel could be consulted by police after arrest about the nature of the crime. I am not sure police have knowledge to apply in selection rather than the pure legalistic method they have at the moment. Community input could be important. The police will always decide, but this is an opportunity for community input. There is too much discretion given to the police, so this is just the opportunity for input. I am not satisfied police have all the necessary considerations to apply. Because they may have some prejudices.

Mr Wills²⁹ rejected the suggestion a community panel could have an advisory role prior to selection of divertees. He said:

The only way diversion can operate at the moment is as an extension of the police discretion whether or not to prosecute. If it is going to operate with reasonable safeguards, it must have that court backing. Not only for us, but also for the offender. If the offender feels part way through the system that they are being hard done by, police are coming down too hard on them and they don't want to do 200 hours' community service or paint Granny's fence, then they can say I am going back to court and I will take my chances in the court system.

John Crookston³⁰ identified lack of funding as a problem for diversion, and said that research, such as the Laven Report, showing diversion's effectiveness would bolster requests for more Government funding.

The criticism of possible police abuse of process is likely to continue, despite the published national guidelines and the effectiveness and competence of the police diversion

²⁸ Sai Lealea, a Fijian, is part of the Pacific Island Advisory Group for the Ministry of Justice and was involved in the Justice consultations for restorative justice. From interview June 18, 1996.

²⁹ See n 8.

³⁰ See n 3.

co-ordinators. But the community panels are an initiative to offer an alternative to the current police- dominated process.

Whilst police control selection of divertees, there seems little that can be done to empower people who may consent to diversion and admit an offence, simply to avoid a court hearing.

A The Laven Report

Mr Crookston said Wellington researcher Christine Laven was commissioned by the CPU to undertake the enormous task of providing a compilation and analysis of national diversion statistics to measure the effectiveness of diversion.³¹ She researched the diversion records before the introduction of national guidelines in September 1994.

Ms Laven looked at trends in the use of diversion in Wellington Central and Manukau Districts from 1992 to 1994.³²

Ms Laven stated that it could be worthwhile to extend the scheme by encouraging community participation in the process, once the decision to divert had been made and provided there was monitoring and evaluation. She called for more funds for more diversion co-ordinators, and to assist community groups involved in the process, because the number of divertees increased each year.³³

³¹ "The Police Adult Diversion Scheme - Trends in the use of diversion 1992 to 1994 - Wellington Central and Manukau Districts and Beyond," Christine Laven, January, 1996.

³² Laven stated that she used data obtained on 589 diversion cases in Wellington Central and Manukau from 1992 to 1994. John Crookston said that those years were targeted because police diversion records were more detailed from 1992 onwards, and the cut-off date of September, 1994 allowed for some limit on the vast amounts of data gathered. Laven began her research in mid- 1995.

³³ Laven noted that since the original Cameron and Young study, there had been a considerable change in the categories of offences likely to be diverted. Offences involving dishonesty, especially shoplifting were no longer those predominantly diverted. There had been a significant increase in the percentage of divertees who had committed offences involving violence, albeit mostly assaults regarded as minor. Nationally, there had been an increase in the numbers of people diverted from 7425 in 1992 to 9547 in 1994.

She found that in both districts there had been a broad spread of ethnic groups diverted for a gradually widening range of offences - mostly minor. Laven found that divertees had a low level of recidivism as measured by conviction within a year of diversion. Of the 589 diverted from 1992 to 1994, 7.6 per cent had been convicted for subsequent offences. Of the 45 who had re-offended within 12 months, 12 had been convicted for offences more serious than the offence that resulted in diversion.³⁴

Ms Laven's recommendations were:

1. That an improved standardised national system of recording data on diversions was implemented as soon as practicable.
2. That information currently entered into the National Intelligence System be augmented to provide a more detailed group profile of those being diverted.
3. That categories of offenders and offences and diversion requirements are subject to ongoing monitoring both by district and by station.
4. That obvious inconsistencies between districts in recommendations for diversion be addressed where clearly local variations are contrary to "justice" considerations.
5. That research be undertaken to identify the factors which influence the decision on whether to divert or not.
6. That in depth evaluation of the scheme is undertaken periodically, including eliciting the views of representatives of all groups of participants.

Ms Laven's recommendations concerning research and evaluation of diversion will be particularly useful to the development of the scheme and as a resource for community panels.

³⁴ The majority of those who re-offended within 12 months were aged 22 years or younger when diverted. Of the 45 who were subsequently convicted 39 were in this age group i.e. 86.7 per cent of the total number.

Statistics may provide a base for the police to get more funding from Government for diversion.

Mr Crookston said that he was pleased with the report and that it was well researched. He would be looking at implementing Ms Laven's recommendations, particularly the improved standardised national system of recording data, over the next year.

B Current operation of the scheme in Wellington and Porirua

The Wellington and Porirua police diversion co-ordinators are experienced officers, who adhere to the police national guidelines for diversion, but each have their own individual styles.

The human side of criminal justice is apparent in Sergeant Paddy Darroch,³⁵ the Wellington diversion co-ordinator, as he tells one divertee, a suicidal young man who committed a minor theft, that the youth had been given a chance and he had to focus on getting himself right before making amends for the theft.

He told the youth, who was unemployed, that he had let himself down with a particularly lousy theft, and that although it had happened, he did not have to worry about it now because the diversion scheme meant he did not get a conviction and could make a fresh start on life. It was terribly important that the youth get to see his doctor. The diversion programme conditions for the youth were 1) see his doctor and continue his medication 2) letters of apology 3) 32 hours' community service with a group 4) \$100 reparation. Sergeant Darroch said of his job:

³⁵ Paddy Darroch, the Wellington diversion co-ordinator for the past three years, has been a police officer for 30 years and says he has spent considerable time in prosecutions. From interview March 7, 1996.

I enjoy it. A lot of police would not like doing it, but it is an interesting job and people open up. That last person was a sad young fellow wasn't he? Let's hope he goes away and does his programme. I believed what he said. We all make mistakes. I never try to be holier than thou, that is the last thing I want to be.

Sergeant Darroch said it was not unusual for him to create diversion programmes including counselling or anger management. He felt divertees with problems should address them, and spend their money on counselling rather than make donations to charity.

He said that the police were very much accountable for diversion programmes. Police could be questioned by the judges about selection of divertees when cases initially appeared in court. There were duty solicitors to advise people in court. There were also big internal police checks on what the diversion officer was doing, and diversion co-ordinators never accepted cash for fines or charity donations from divertees.

Senior Constable George Ulyate,³⁶ the Porirua diversion co-ordinator said he used the police national guidelines for diversion, but each district had local guidelines shaped to target the particular types of offending in their areas. He said:

For theft as a servant, there is no way they will get diversion, it is a serious offence. It is someone who is in a position of trust stealing from his or her employer. Serious shoplifting such as for \$400 worth of stuff no way are you going to get diversion for that. Diversion is intended for minor offending."

He believed differences in diversion according to region were no greater than the different attitudes of police in their work generally. He explained:

The penalties might vary, and the attitudes and opinions of the people running them won't be quite the same. Even if you brought them together and put them through a training course they would still go away and do it the way they wanted to do it. If you have a hard-nosed guy, people in his patch are going to get hammered, and if you have a person who is going to listen to what everyone says so everyone benefits, then it will be different again.

³⁶ See n 7.

Mr Ulyate experienced community panels in the mid 1980's, when he was a constable in Tawa. There were panels in Titahi Bay, Cannons Creek, and Waitangirua. The diversion co-ordinator at the police station would get the files and farm them out to the various community constables who would then convene a panel. The police would advise the panel, but the panelists would decide on the penalties.

However in time, the panel members changed, the community constables changed, and the whole scheme quietly disappeared into the floodwaters.

Mr Ulyate said that community panels needed a police officer to look after them. He said:

You cannot give it to the community and let it get on with it, although that may have been the idea, because you have no control over the programmes they create. I think there has to be a measure of control. We are reducing the police budget and police staff, so I am a bit cynical about how the community panel idea might work.

A lot of people involved in my particular community group were also on other committees and had meetings five nights a week because they were tied up with things. This was one reason why this never continued, never ran in the way it was anticipated it would.

Mr Ulyate argued the closed nature of diversion hearings should be preserved as the purpose of diversion was to avoid the stigma and publicity of a conviction and to give the diveree a fresh start. He said:

As for some lawyers thinking diversion hearings should be publicised so justice is seen to be done: the most you do is have three diversions on one night - so do you save them up for a month and have a public spectacle in the town hall ?

In summary, diversion co-ordinators appear to be making programmes that address divertees' problems, but they have heavy workloads. They could benefit from the pool of community experience, contacts, and cultural knowledge panellists would offer.

C One Pacific Island experience of diversion

██████████, who had been charged with a minor assault, described his experience of diversion, which highlights some of the cultural difficulties experienced by Pacific Islanders in the justice system.

- a) He did not want to spend the time and money to seek legal advice, and just aimed to plead guilty and get the matter over with so he did not have to take another day off work;
- b) He disputed some of the facts on the police summary, but did not feel able to do anything about it.
- c) He only went to see the duty solicitor by chance at lunchtime because his name had not been called in the morning, and he saw that other people without lawyers were going to see her.
- d) He knew nothing about diversion, until it was suggested by the duty solicitor when he appeared in court.

Samoan community leader Galumalemana Alfred Hunkin³⁸ said Pacific Islanders had quite a different attitude to justice than Palagis.

A Palagi, unlike an Islander, would exhaust all the legal remedies possible to get his or her name cleared. It is a very good idea for our people to get advice from others, and the support they need. For a lot of Pacific Island families on minor offences, the attitude I get from listening to people is well, may as well get it over with, pay your fine and not spend a lot of money on keeping your name clean. They probably think it is cheaper. They are thinking in terms of economics.

██████████ experience of being charged, kept waiting in a cell before getting police bail, and then waiting to appear in court, gave him a taste of the justice system he said he would not want to experience again. He recalled:

³⁷ From interviews May 24 and August 7, 1996.

³⁸ Lecturer in Samoan Studies, Victoria University. From interview June 10, 1996.

I felt really bad about myself sitting in the court waiting room because there were some people I knew working in the courts. I waited all morning from 10 am until midday and my name was not called. I kept waiting for my name to be called and expecting it would be, but it wasn't. I had not seen the duty solicitor because I thought I would just go in and plead guilty. I went to see her at lunchtime because other people were seeing her. She suggested diversion. The officer in charge of my case was in court that day and did not look very happy about me getting diversion.

When [REDACTED] went to see the temporary Wellington police diversion co-ordinator later for a programme, he said he did not understand that although he did not admit all the matters on the police summary, those he admitted were sufficient to constitute the offence of assault.

He said:

The temporary diversion officer had a negative attitude. He wasn't very good at listening. He explained diversion and wanted me to admit everything written on the charge sheet and I said, "No, I am not admitting all that because I know exactly what I did."

He threatened to send me back to court saying diversion was not for me. He left the room to speak to someone and when he returned he had changed his mind. He was going to give me diversion, but he still thought diversion was not for me because I had not admitted everything in the police summary. I was still annoyed about having to agree to the police summary. I just signed it because I did not want to go back to court.

Notwithstanding disagreements he had with the officer concerned, [REDACTED] felt he benefited from his diversion programme, which included him paying for alcohol counselling, and a men's anger management course. He said, "I am a good person. I am not a criminal. Overall I think diversion is a good thing. If I had not had it, I would now have a conviction."

[REDACTED] believed under the same circumstances he would have opted for a community panel if one was available rather than to go through a police programme. He said:

I would not be embarrassed if I knew someone on the panel. Why should I be? It would work in my favour, especially if I know the person well. I would feel more relaxed with them. More at ease. I would not want to go to the police. You see, if I went with the police programme, I would have to stick with it. It is the law. Maybe the Pacific Island community panel would be more flexible.

If [REDACTED] had pleaded guilty in court, it is likely he may have been convicted and fined, and missed out on the help provided by the diversion programme.

A community panel may have provide Pacific Islanders with a safer environment so they can speak up and describe the circumstances of the offending. Community leaders may ultimately provide a stronger sanction against re-offending.

D A judicial view of diversion

One of the major criticisms of diversion is that the police basically have too much power and are acting as judge and jury.³⁹

Wellington District Court Judge Neville Jaine⁴⁰ said that the diversion system was working sufficiently well despite its critics and that he did not feel that the police were usurping the judicial role with diversion. He felt that if it was a bad system, or required more regulating, then diversion would not still be around after nine years.

Judge Jaine said he did not see the need to legislate to give diversion statutory recognition. Those involved in diversion had sufficient experience of it, and it had stood the test of time sufficiently to show that its flexibility was satisfactory. Provided there was not any concerted move to extend diversion to much more serious matters so that it usurped the authority of the court, it would continue to have support. He said:

I like the scheme because every dog is entitled to one bite. We all make mistakes in our lives. We commit indiscretions and I think a person who has not previously appeared before the court and commits a relatively minor indiscretion or relatively minor crime is likely to respond to the criminal justice system better, is likely to recognise they have been given an opportunity, and as a result of that, is less likely to offend again.

First offenders came up against the criminal justice system and saw it had a human face, and it encouraged them to think, "this was stupid, I won't need to do that again. I have been given a chance, and I will make the most of this chance," he said. Judge Jaine said:

³⁹ John Wills raised this common criticism of diversion. See N 8.

⁴⁰ From interview, June 27, 1996.

And the vast majority of them do not come back, and it is because of the human face to the system, the fact we are all humanly fallible, and the fact that you do not get kicked in the teeth very quickly with your first indiscretion. That is why I like the scheme. It has the safeguards that people firstly agree to it, they do not have to go down this road. It is an opportunity that is given to them and they can take it or leave it.

Judge Jaine said regional inconsistencies in police application of diversion were no greater than the different approaches of judges. He stated:

Inevitably if the system is being administered by different police officers, there will be more lenient or more stringent attitudes taken. It after all involves the exercise of a discretion and I suppose one would have to admit that those sorts of variations may be no more than judicial attitudes to a s 19 discharge.⁴¹ You come before one judge in a close call exercise of discretion, you might very well find that in a close call type situation one judge hearing those facts would grant a discharge, while another would not. In that respect our legal system is being administered by humans.

Judge Jaine said that judges had always kept diversion at arms' length and that they had never enquired into whether it was appropriate or not. Sometimes counsel argued before him that people who had not been offered diversion by police should be diverted. Judges steered clear of this argument and generally said if you believe it is a case that should be diverted and the police won't divert it, then the matter will simply proceed through the court system and counsel could apply for a s 19 Criminal Justice Act discharge if they wished.

Judge Jaine felt the diversion scheme was not a hidden form of justice. He said:

It is certainly not hidden when the person appears in the court room. Anyone in the public in the court room can see that the matter has been diverted, and they can see at a later stage when the matter is called again after the diversion programme is completed, that the charge has been withdrawn. That is done publicly. What exactly the defendant had done to earn that privilege the court is not told.

The duty solicitor was a check that defendants had independent advice on whether to take their chances in court, or agree to diversion. If defendants were concerned the diversion conditions set were likely to be more onerous than the penalty imposed by the court, they could get that advice from the duty solicitor. Judge Jaine said:

⁴¹ S 19 Criminal Justice Act discharges.

Indeed I suspect without knowing that some of the penalties may be slightly more onerous, but one has to recognise that in fact it is a system where for example, the police may on a shoplifting charge direct a donation of \$200 to be paid to a charity, whereas the court may impose a penalty less than \$200 for stealing the same small item. But the diversion has not entered a conviction for a dishonesty offence for the defendant, which is a significant penalty for some people. So you cannot really equate the penalties simply in terms of the amount of money or the amount of hours they may work in the community. If somebody goes through the court process, they may get a conviction.

IV VIEWS OF THE WELLINGTON COMMUNITY - WHAT ISSUES ARE RAISED BY THE PANELS ?

Many Wellington Pacific Islanders have had a depth of experience in community organisations, boards, and consultative groups for various agencies. Those I interviewed were able to draw from their own experiences and identify flaws in planning for consultative groups e.g. a lack of clarity as to objectives, roles, lines of authority, as well as a lack of funding.

Other more difficult issues will take more thought and time to resolve such as finding truly representative community people, determining how much lee-way panels should be given concerning creating programmes, and the best composition for panels. Education is needed in the Pacific Island communities about both the existing legal system, and about diversion. Training should not be limited to panelists, but time should be spent holding community meetings to inform those who are interested.

A Existing Pacific Island community groups

One of the groups that is already taking people on diversion programmes is the Samoa Aotearoa Unity Trust based in Newtown. (SAU).

Tapa Tailiki⁴² of administrative services said that the group specifically works with Pacific Island people, but takes all ethnic groups. The group has referrals from the police, the Department of Social Welfare, or Department of Corrections. Schools or the Children and Young Persons' Service referred students who had truancy and behavioural problems. SAU had signed a contract with the Department of Corrections to take 20 placements in the financial year 95 to 96 for counselling and community service. The group provided culturally appropriate counselling for clients who were referred or came along on their own initiative.

The sorts of problems clients had were alcohol abuse, anger management, and financial. Mr Tailiki said:

We help with budgeting advice and work together with the budgeting service in Newtown. Once there was only one loanshark in Newtown, but now there are several and they target the Pacific Island community, so we have to deal with the results of people getting into debt. About 70 per cent of the clients we get through diversion have problems with alcohol. Some of them have problems at home such as violence and domestic abuse. For marital problems, we work with marriage guidance to better our service. Some have chronic problems and we have to refer them to people with specialist knowledge.

All sorts of people come through diversion. Even people with very established families have problems. The main problems are alcohol abuse and marriage difficulties. Some people do not feel comfortable going to their churches for help and advice. People will come to us, but some people do not want anyone at church or in the community to know the problems they have.

SAU had 4 permanent staff and one volunteer. The community work at the centre utilised whatever experience the person offered, including reception, correspondence, and word processing skills.

The aims of the counselling SAU provided were broad, said Mrs Katerina Letoa,⁴³ a counsellor. She said:

I would like people to have a sense of security. I want them to be at ease and to trust me. I would not want them to worry about having to come here.

⁴² From interview, June 18, 1996.

⁴³ From interview, June 18, 1996.

A lot of healing has to be done in the relationship between a person and the community. We provide a follow up weeks afterwards to see if the person is all right. A lot of people who have worked with us, drop in to say hello. Some of our members have done courses in alcohol and drug abuse so we know we have people here to provide that service.

B Pacific Island perspectives of offending and justice

The Pacific Island communities have different views of offending and of any stigma attached, but shared similar ideas of accepting offenders as part of the community, healing breaches with apologies, and forgiveness.

Ana Koloto⁴⁴ said that in her Tongan culture people were tainted if charged with a serious crime. An offender's whole family was tainted by an offence. She said:

People have long memories, and they do not forget. If your grandfather mismanaged some money and if you do something wrong, people say it is ok, his grandfather did the same thing. The attitude could be used to your advantage, used to unite the family, by saying, "There is no way we are going to do what our grandfather did."

In contrast, Samoan community leader Alfred Hunkin⁴⁵ said that in Samoa once a person had done their sentence, there might be some problems, but they were allowed to get on with life. He observed:

One of our former speakers was in jail and then went straight back into politics. It was just something he did in life. Samoans don't hold something against people. Only if they are pushed then they may be angry and you cannot break the boundaries down. People don't think of his prison term when his name comes up in politics. He was just someone who had talent, but did something wrong. He did his time, and got on with his life. That's the attitude.

Alfred Hunkin said dealing with offending in the Samoan way meant sitting down and being dressed down by an elder, telling them they were giving a bad name to their parents, the aiga, and reminding them of the responsibility to maintain a good name as well. He said:

⁴⁴ Lecturer in Pacific Island Education, Victoria University. From interview, June 11, 1996.

⁴⁵ See n 38.

We can say," My expectation is for you to help out, you must remember you are not just Sione, you are also the son of Leota, and Leota is a member of the extended aiga." Now all of them look at you and say, "now Sione what have you done to help your father's good name." He would look down and apologise. We can only do that if people on the panel have some understanding and feeling for the person's plight.

In New Zealand traditional controls were probably not as strong as those from Samoa if Samoans were not part of a church community. He said:

If the family is struggling on its own to make ends meet and has not been to areas where the children themselves can feel the pressure of the peer group e.g. the church, then I don't think the traditional protocol would have as much effect if at all. That is where the panels can be useful in teaching them something of the Samoan culture.

The fact a lot of our youngsters were born in New Zealand and do not know their language nor their protocols, and cultural traditions, means they are at an absolute disadvantage. We are saying, and have been saying for a number of years now is that language and culture have a critical role in building their identity.

Jean Mitaera,⁴⁶ a Cook Islander, said there was a lot to be said for the process of shaming and dealing with offending publicly. She said:

I don't think the Cook Islands today would have a traditional system as opposed to whatever is deemed necessary by the victim's family. One story is told by family of abduction and rape of a child. The offender was caught and dragged by rope and horse right through the village. You cannot get a more public sentence than that.

Sai Lealea⁴⁷ said that the Fijian way of offenders making amends was not too different from the Samoan ifoga. He said:

We present kava and a whale's tooth and ask for forgiveness. That was done by the offenders' relatives, the offender shows shame, and the relatives are there to acknowledge the offender does not exist on his own. Not only is the offender shamed, but the whole family group is shamed by his act. In Fiji we were brought up under the British system. The justice system takes its course, but because we are Fijians, notwithstanding the other formal system, we still carry out our customs. That people continue to perform them indicates the importance they attach to that, even though somebody may have gone to jail. The issue now in New Zealand is at what stage we should do that, whether the restorative justice principles should run parallel with the justice system or simply be an alternative.

Cultural practices could be integrated into the justice system. He said:

⁴⁶ Senior Policy Analyst, Ministry of Women's Affairs. From interview, June 17, 1996.

⁴⁷ See n 28.

I think some form of integration, acknowledgment of cultural practices, a form of justice people can deal with each other properly, is best. One of the problems with restorative justice is how to balance the cross-cultural issues. Balancing the rights of the victim. Bring them together to acknowledge, to shame, to forgive and to heal.

As to the application of Fijian values to community members in New Zealand, Mr Lealea said Fijians had a deep respect for authority, as did most Pacific Island groups. He said:

It depends on whether people are integrated into the system or not. It is about instilling and fostering that respect. You cannot force people to accept culture - we are not in Fiji now. So there is the opportunity for those who do accept the culture to access other aspects of the justice system. There are different ways of bringing up people, you cannot capture all parts of the community, certainly the panel would only work for those Fijians who wanted to be part of that system.

Tokelauan community leaders discussing restorative justice⁴⁸ identified a breakdown in Tokelauan culture in New Zealand which they said was typical of all Pacific Island cultures.

Ioane Iosua⁴⁹ said that there was a clear need for community counselling and participation of elders in the criminal justice system.

Loimata Iupati⁵⁰ said that elders were frustrated in New Zealand because they had the culturally relevant solutions. He said:

They are very effective back home in Tokelau, and would be equally as effective here if they were supported. The elders felt disempowered to put into practice what they thought the solutions were. The authorities took their powers away. It must be clear where the boundaries are, so people can operate within them.

Traditional punishment in Tokelau would be community work. In Tokelau minor offending would be dealt with quickly and shaming was effective.

⁴⁸ From Ministry of Justice meeting with Tokelauan community in Porirua on June 8, 1996.

⁴⁹ Mr Iosua is an Auckland Tokelauan community elder.

⁵⁰ Mr Iupati is a Porirua Tokelauan community elder.

Ioane Iosua said that if two men were fighting, both were guilty of violence. The offenders would probably be fined, told off by the village councils, reprimanded by the church, and the butt of jokes in the community. The whole social structure weighed against offending.

Sila Taupe⁵¹ said that harmony in the community was usually quickly restored. He said:

When there is a minor offence involving two families they might get together quietly and settle it themselves without any public involvement. There would then be no shame. We do not solve problems with violence. Tokelauans use their tongues as tools if they disagree.

C Consultation prior to selection

Community leaders had a range of ideas on consultation of panels and composition. It seems the consistent thread was that time must be spent on thorough consultations with all sections of the communities, and that whatever the composition of the panels, people must have the mandate of their communities, the wisdom and knowledge of their culture's language and customs, as well as the skills to effectively operate in the modern world.

1 Consultation

Cherlynn Sikoti- Naik⁵² said that for a Wellington community mandate the Samoan Advisory Council, or the Wellington Multi-cultural Educational Resource Centre could be helpful to put together a series of consultations. She said:

It is not something where you can just say we are going to have these people, it has to be a consultative process first. That goes for every group. That process will have to be facilitated so the police's overall objectives are met. It has to be a well orchestrated process with specific objectives, and must be thorough. If they want quality people they will have to go through a certain amount of work. The board for this centre has only been in place since mid-April and there was a rigorous process involving the Ministry of Education, Ministry of Pacific Island Affairs, and Internal Affairs, and different representatives from all the Island groups. They need to make sure the people they choose have the decision-making skills to work efficiently, that they have community skills and networks to be effective, and that they know what they are doing.

⁵¹ Mr Taupe is a Porirua Tokelauan community elder.

⁵² Chairperson of the Wellington Multicultural Educational Resource Centre. From interview June 12, 1996.

Ana Koloto⁵³ said that people needed both skills and to have the mandate of their own communities. She said:

That is the difficulty because as a migrant group we are here trying to establish ourselves. Tongans are the most recent migrants. We are slowly establishing ourselves in Wellington. We come from small villages and in the villages it is quite clear who the leaders are. You have people who are able to determine disputes. Here in New Zealand you have people from different villages and you are trying to establish who the leaders are. That is a difficulty. Tongans come from a very hierarchical society, in terms of status, the person must be from a noble family or highly educated. Education has the role of social mobility, it allows a person to move up. You have to have someone you can look up to.

Jean Mitaera,⁵⁴ from the Ministry of women's affairs, said there were well over 100 Cook Island groups in the Wellington region. Any panel would have to be selected geographically.

She said:

Usually the Ministry of Pacific Island Affairs knows who to contact. I think the key is to have a panel who know the genealogy of the person concerned. I suspect there are very few Cook Islanders in Wellington that I don't know in terms of their families. I suppose with that kind of knowledge you know to individualise the situation. You talk about the traits of the family or work on the strengths of the family, what it is known for. Some families come from sporting backgrounds, others from strong church backgrounds. It is understanding that, and personalising that, understanding the family the person comes from.

Sai Lealea⁵⁵ said:

I was concerned about the police scheme because of the absence of community involvement, so I am glad that they are picking it up. A mixed panel would be good. Ideally it would be good to have different community groups represented on this group. You could either have a set panel or members of the community on call. The Ministry of Justice calls on Pacific Island leaders for advice.

2 Composition and commitment

Community leaders had different ideas about whether community panels should be of a single ethnic group, or a range of ethnic groups.

Cherlyne Sikoti-Naik⁵⁶ felt it was best for offenders to be dealt with by people from their own culture. However, if limited resources meant a panel would comprise a mix of all the Pacific Island groups then that was workable too. She said:

⁵³ See n 44.

⁵⁴ See n 46.

⁵⁵ See n 28.

⁵⁶ See n 52.

I think that different Island groups can co-operate. There is a community network out there. I am all for our Pacific Island communities working together for the benefit of society. Whether we like it or not the Palagis tend to lump all Pacific Islanders together because it is convenient. But I think it is more appropriate for Samoans to deal with a Samoan offender. Because in our own individual community groups, we have the networks and our own hierarchical structure we can work through.

She felt selection of panellists required skills that could not be obtained by brief training. She said:

I am all for such initiatives, but it has to be carefully put together, it has to be carefully monitored, to gain the outcomes aimed for. I have been on many community boards and quite often panels are put together and don't have the right people. They may not necessarily have the skills, and it always ends up that those who have the most skills dominate which may not be necessarily good or representative of the community.

Even the criteria of community knowledge has to be defined. There are lots of community people, but there are still some technicalities that require specialist knowledge.

Sai Lealea⁵⁷ felt that each of the Pacific Island community groups should be represented on the panel. He said:

Community people includes a balance of professional people and those with culture and custom input. There should be some brief legal training, for e.g. Justices of the Peace get minimal legal training - as this panel is just advisory, just assisting the police. Each of the communities should be consulted given the importance of the panel. You cannot make members of one part of the community and call them representative, you have to go out and explain the whole thing, and inform the whole community and give them a chance to speak.

Jean Mitaera⁵⁸ said whoever set up the panel must be clear about the type of people they wanted, and how they were going to inform people about their tasks. She said:

In my experience of Pacific Islanders being on different sorts of panels, they are often not sure, and this includes myself, as to their own role. Are they there as a community person, because of their own profession, their own particular expertise, and what are the expectations that go with that? If you come as a community representative then the expectations are different than if you come as a member of any other group. Not every Pacific Islander is a community person. There must be clarity in the roles, in information about the roles, definite lines of authority, for example the Minister's Advisory Council whilst it is very influential, there is no power whatsoever, expectations of service, how long you are expected to be on a board. Some people live on a board.

She felt mixed panels would be best. She said:

⁵⁷ See n 28.

⁵⁸ See n 46.

There is a two prong approach - a mix ensures that those of the same culture as those on the panel, don't lock in and come on overly heavy, and are given the opportunity to hear other people's ways of dealing with things. More meaningful for everyone. If mixed - you still also have the opportunity to have someone with your own cultural background who understands your family, who is there possibly advocating for you. That is the check. Sometimes it can be easy to have tunnel vision about how things should be dealt with, so this is the best process.

Ana Koloto⁵⁹ said that the panels should not be a mix of Pacific Island group representatives, but rather a single Island group belonging to the offender. She said:

New Zealand has lumped together Pacific Island communities for too long. We are saying we are different, and that has got to be respected. Although we have similarities, we are very different and those are the differences that count. An offender would appreciate someone who can appreciate his culture, speak his own language, rather than be heard by a mixed Pacific Island panel. The system should respect those differences.

It was important panellists were committed to their work. She said:

If anything is going to be successful, the person has to be full time. One failing is that often the same people are on all the groups and boards. The reality for people working full time, they have to balance everything. I decided to have only one community commitment this year.

Gavin Mickell⁶⁰ is chairperson of the Wellington Resource Panel, which works within the Children and Younger Persons Service as an independent consultative body providing social workers with expertise and suggestions on investigating cases. The Panel's experience yields some useful lessons for diversion community panels. Mr Mickell said that when selecting panellists it was firstly important to include negotiation with the Maori community. It was important to include representatives from local Wellington, as well as outside, tribes. Panel numbers were best kept small. He said:

Initially when we started off we tried to get a totally representative panel and a whole range of cultural groups and we ended up with about 25 people. That was hopeless to cope with, it really was. So now we have a much smaller group of seven or eight. We work more efficiently, make a bigger commitment. Although it would be good to have representatives who are Cook Island, Niuean, Tokelauan, Fijian and from every social agency in the city, it is just impossible to run.

⁵⁹ See n 44.

⁶⁰ From interview on June 21, 1996.

It seems the best way to ensure efficient and representative composition of panels is to follow Hoani Waititi Marae's example and have a pool of panelists and to draw a few people from the pool for each hearing.

3 Elders

Most community leaders felt elders and chiefs had a place on any community panels, but that young New Zealand-educated people were also valuable for their knowledge and skills.

Sa'u Samuelu⁶¹ felt chiefs and elders should be on the panels. He said:

As a Samoan, I feel a chief should be on the panels. I am sure elders understand modern problems. Alcoholism and drug problems have always been there. You need people on the panel with knowledge of protocol, traditions, and language.

However, Alfred Hunkin⁶² felt there should not be a reliance solely on elders. He said:

We should have a spread of old and young people, men and women, to try and overcome this problem so that we do not heap all the responsibility on the shoulders of the few whom we call elders. There are also a lot of young people who are educated, bi-lingual, and bi-cultural as well. We should look at helping them to be involved in community matters. It is good for offenders born in New Zealand, that they could learn a lot about Samoan culture. They are learning about things Pacific Island such as pride in the family name.

D Training

Cherlyne Sikoti- Naik⁶³ said that training should ensure panel members know the scope and limitations of what they could do. Funds should be given to the community organisations providing programmes for divertees.

Sianaua Ostler⁶⁴ said that training of panellists was most important and formed the basis of any scheme's success. It was no use setting up these systems and appointing people at random

⁶¹ See n 27.

⁶² See n 38.

⁶³ See n 52.

⁶⁴ Acting Manager of the Pacific Island Unit, Department of Social Welfare. From interview, June 14, 1996.

onto the panel. The justice system had its own language, and the law was in English. The only people who knew who should represent their community were the ethnic groups themselves.

She felt the family support system, the circular method of bringing people together to discuss things properly, would help resolve issues. There needed to be a community follow up to ensure the offender and family was supervised and given support. She said:

I prefer to have special people in the community to be trained and permanent members of a community panel. When an incident happens we allow members of the family to come in to those groups, or people from the culture. If the person's father is Chinese, and mother is Tongan, we need people from each culture to come in, to bring in their perspective and the panel can help each family to see what the best solution is. How the family can best be helped as a whole. The family of the offender is not part of the panel, but should have input. Victims - those families need to bring in their perspective and they need help.

Ana Koloto⁶⁵ suggested that training and education should extend to the whole community and not just panelists. She said:

If it is to be a community programme, we cannot rely on one person, so we must train people from different community groups. If one person disappears or runs away the whole programme will fail. So it is not about just one person, but training key people in community groups. Particularly concerning people from the Tongan community, where you cannot get one representative, you have to train people from different churches and community groups. It could be a matter of bringing all the people together, which involves, time, money, and food, to get them to understand the seriousness of the problem and in terms of accountability with the families too.

E Confidentiality

Confidentiality for community panels is an issue that will need some thought, because Pacific Island practice generally is that information should be shared and problems dealt with openly so that everyone can contribute to ways of solving them.

⁶⁵ See n 44.

Cherlyne Sikoti- Naik⁶⁶ said confidentiality was always a problem with community groups dealing with sensitive matters, but that experienced people knew the boundaries. She stated:

Although a lot of our people are involved with panels like that, they know what the rules are and it is made quite clear that everything is totally confidential. But there are less controls in a community setting than there is in an institution dealing with justice.

The confidentiality issue was connected to Samoan traditional ways of doing things; firstly trying to solve them within the family, and then going outside for help. She stated:

Our own aiga (extended family), includes the 16th aunt or 16th cousin, but the core group are the matai (chiefs), or kaumatua (male elders) - the ones who make the decisions. Any problems in the family the aiga will try to deal with it first as a protection for the individual and the family. They want to be able to say they can deal with their own problems. There are times e.g. sexual abuse when that scenario is not the best way to deal with it - because you are so whakama (ashamed), that you wrap things up and it is not dealt with.

There are other instances where the aiga is the best place, and if you cannot resolve it then start looking externally and say what they can call on. Some of the first people they can call on are community leaders with whom they are comfortable, who they think will have the wisdom to guide them through, e.g. the church ministers or elders. They might then look to bring in other people like social welfare, family services, counselling groups.

Cook Island community leader Tapaeru Tereora⁶⁷ preferred the idea of a family group conference to a panel. If a panel was to be used, the diverte'e's family should be involved. She said:

For me, if you have a panel, whoever else is on the panel, there must be someone from the family. Some people do not like being exposed to the rest of the community. I don't like the idea of a panel, I would want a family discussion rather than a panel. It would be nice to ask the family involved to say whether they want certain people on the panel, instead of the department or police choosing. It would be just courtesy to ask, "Do you want this person to be part of the group?"

She referred back to her past experience being a social worker as to how some Pacific Islanders would rather not deal with their own people. She said:

The Palagi staff didn't understand why, when a Cook Islander came to the counter because she was having problems in her home, and the Palagis would say, 'Go to Tapaeru, she is a Cook Islander, she can help you,' that the woman said she did not want to talk to me because I know her personally. It is a confidentiality thing. She does not want me to know. In other words she does not trust me and fears that because I am a fellow Cook Islander, I might tell everybody what happened to her.

Clear confidentiality guidelines are needed for panels.

⁶⁶ See n 52.

⁶⁷ Senior Development Officer, Operations Centre, Ministry of Pacific Island Affairs, Porirua. Interview on June 12, 1996.

F Embarrassment

In a sense the community panels, although closed to the general public, are a more public form of justice than seeing a police diversion co-ordinator, and some people might prefer to be dealt with by police than their own community because of embarrassment.

Alfred Hunkin⁶⁸ said he could imagine there would be quite a number of people, Samoans, Tokelauans, or any other Pacific Island group, who would prefer to keep their misdemeanours private. He said:

On the other hand it is important that our people realise that those who become part of the panels can be trusted to keep information confidential. There are a lot of us who are able to do that. That would be the difficult part - to trust your own community to ensure that the word does not spread. That is where the police should ensure panelists undergo some training where confidentiality is stressed.

Ana Koloto⁶⁹ said she would personally prefer someone from her own community did not deal with her case, but for some people being open might be the best way of getting help and resolving the problems. She said:

If someone from my family commits a crime, we are ashamed because we don't want to be associated with crime. I am not sure about how other people would feel. It might be easier to deal with it once we go through the whole purpose of it, swallow our pride, and deal with it. Different individuals deal with it differently. For me, it would be best for me to have it dealt with by the police and not my community because it is whakama. (shameful).

G Panel funding

Community leaders felt funding for the panels was a major concern and that the time for community people to work for nothing had passed.

Samoan community leader Sianaua Ostler⁷⁰ said that she would encourage Pacific Islanders who were to be on the community panels to require payment. She said:

⁶⁸ See n 38.

⁶⁹ See n 44.

A lot of our people have been doing things for nothing a long, long time. Mainly because of the alofa or aroha (love). You cannot pay your rent and bills from aroha. We love our people and a lot of us are still doing things for nothing. When these organisations use the community people, they must pay for the skills. They are skills nobody else has. The Chinese have skills in their culture, the Samoans in theirs. Communication is the key of these discussions and these panels.

This view was echoed by Alfred Hunkin,⁷¹ who said if the community was to take up the state's responsibilities it should be given the sufficient resources. He said:

I think the community should also be remunerated for giving up its time and energy and resources to support the state. The state's responsibilities are obviously not being met properly. There are not enough funds for agencies such as the police. They should give funds to the community and say, "Here, we want you to do this for us, because the government cannot do it, because we want changes around here." What they must provide is the resources to make sure that the community does not get sapped of energy.

Jean Mitaera⁷² agreed the panelists should be paid and said thought should go into preparation time and travelling to panel meetings. She said:

What some people do not do, and I think they should do, is pay for preparation. There is a difference between a sitting fee and actual preparation time. Sometimes you have to read cases in advance and there is the question of travelling time. My own experience in a Government Department is that I could not believe the rigmarole involved in paying for expert advice, and ensuring a cash cheque is handed over and taxi chits are dealt with. Pacific Islanders don't have excess funds for reimbursement a month later, they need money up front to get there.

Ana Koloto⁷³ said funding and information were vital. She said:

Firstly information - you have to understand why the police decided to offer a programme such as this, that it is a whole education process for our people because we do not have this as part of the justice system where we have come from. I also think in terms of resources, that our people have got to be paid for their time and services, for so long we have done community work without annuity.

H Severity and appropriateness of programmes

A concern about the panels is that they must be adequately monitored so that they do not make outrageous programmes and penalties.

⁷⁰ See 64.

⁷¹ See n 38.

⁷² See n 46.

⁷³ See n 44.

Bernard Jervis⁷⁴ said he recalled some criticism of marae-based programmes some years ago, about some cases where the programmes were somewhat harsh. He said:

Compare that with the Samoan social worker in Auckland beating up some of the youths in her care. Those are my worries. All I am really concerned about is, if you have panels such as this, what is the motivation behind the process, is it to keep people out of the criminal justice system, or motivated by something else by race, or motivated by ways of obtaining further resources, or even a genuine appreciation in a pioneering sense for restorative justice ?

George Ulyate⁷⁵ said that a police officer would always be with the panels during hearings, not to be involved in the decision-making process, but to advise. A second check was that the police diversion officers would always get the files back stating what programmes had been made.

There are checks on panels built in to the police national guidelines.⁷⁶ Additionally, it is a condition of funding from the CPU via the Safer Community Councils that budgets for the projects include an allocation for evaluation of the panels' work.

Finally, so long as the philosophy, objectives, lines of authority, and scope of programmes, are expressly stated in advance, there should be less chance a panel would go adrift.

I Victims' rights

A major issue to be resolved by community panels and police is to balance victims' rights with those of the offender so that diversion may truly be considered a process of restorative justice.

⁷⁴ See n 25.

⁷⁵ See n 7.

⁷⁶ The police national guidelines state that when considering diversion through community groups it is important to establish:

- a That as diversion is an extension of the police discretion to prosecute the police retain control over the diversion programme. This is to ensure that no group or family exerts control over the process. It is also important to ensure the offender is dealt with even-handedly.
- b That the community group and offender understand the purpose and reasons for diversion.
- c That the community group and the offender understand that failure to comply with the diversion requirements will result in the case being referred back to court.
- d That any requirement of diversion is properly supervised and reported to the diversion co-ordinator.
- e The diversion co-ordinator is consulted on any requirements imposed on the offender.
- f What offenders the diversion co-ordinator will refer to the community group.

The experience of Hoani Waititi Marae where no victims, other than the mother of one of the divertees attended hearings, is a concern. Cameron and Young⁷⁷ stated that in the diversion scheme victim involvement and consent seemed more apparent than real.

Paddy Darroch⁷⁸ said of victims' consent to diversion that the final decision was with the police, but he had found that 99.9 per cent of victims agreed with it once diversion was explained to them properly.

There must be a balance between rehabilitating the offender and taking account of the victim, especially in situations where the two may be from different cultures.

Ana Koloto⁷⁹ who did volunteer work for Victim Support in Hamilton before coming to Wellington, felt the victim needed a greater say in the diversion process. She said:

You are seeking forgiveness, so the feelings of the victim must be taken into account. If the victims do not want the offender to get community service, they should have a voice. The people we must consider more are the victims, they are the ones who have suffered.

Alfred Hunkin⁸⁰ said that for victims the face to face reconciliation of ifoga (formal apology) was valuable. He said:

People have to learn to get on and live together again. If you have a system where you debar one person who has done wrong, from the victim, then the matter will accelerate. The victim will always feel antagonistic towards the offender. The offender will say he does not care much about the victim. But if you bring them together face to face, you get the human interface, which is vital for rapport. Now that is part and parcel of our culture. Face to face you share the wrong with everybody. You share the forgiveness with everybody else and the reconciliation is part of people coming together. Making sure everybody has a responsibility to lessen the weight of the wrongdoing and the feeling of being aggrieved by the victim. So it is a valuable thing.

Bernard Jervis⁸¹ said that whatever terms of reference you gave to a restorative justice model it only made sense if it included victims.

⁷⁷ See n 9.

⁷⁸ See n 35.

⁷⁹ See n 44.

⁸⁰ See n 38.

⁸¹ See n 25.

Mr Jervis said that family group conferences held for youths under by the New Zealand Children and Young Persons Service were not always comfortable for the victim, and he warned that community panels may create the same situation. He said:

In my experience, the support which is put around the offender in the exercise in most cases overwhelms the support, or lack of, around the victim. As a result it could be an intimidating experience, especially in a cross-cultural situation, but even if it is in a monocultural setting, for the victim.

Mr Jervis had also experienced being a victim in a FGC when a youth burgled his house. He was asked to wait outside next to the boy's family, because there were no separate waiting places. He said:

When I went in this young boy had all his family there - his mother, young children, baby, elders and so on. There must have been about eight people supporting him. I did not have anyone. He had someone else who seemed to be speaking for him as well. I listened to all this and he was very sad, apologised, and the family were regretful and apologised. That was fine, getting an apology. But I did not actually believe him. I was getting this sob story, broken family, mother had a lot on her hands, young baby.

Mr Jervis had told police he thought the boy should do something for the hospice. However he found out weeks later the youth had been put on community service to his elders.

Sa'u Samuelu⁸² was also concerned about cross-cultural situations. He said:

My concern is if you have a Pacific Islander who is the offender, but the victim is not from the same culture. From a European perspective, there would be more of an individualistic approach. If it was a Pacific Island offender and Palagi victim, you would need first to brief the victim about the cultural processes. A written apology by a Pacific Islander carries no weight whatsoever. Especially from a Samoan perspective - I might be an offender, but I would bring in my chief to speak on my behalf.

Steven Lau,⁸³ of the Wellington Chinese Businessmen's Association, said he did not agree with diversion at all because he felt the criminal justice system generally, and diversion in particular, was too offender-focused and not enough importance was given to the victims. He said:

⁸² See n 27.

⁸³ See n 4. Mr Lau was president of the association at the time of the interview on June 14, 1996. He is also manager of Boulangeries croix du Sud (Wellington) Ltd, in Newtown.

Being in business I know exactly how frustrating it is to be able to gather enough evidence to prove someone committed a crime. It costs the proprietor a hell of a lot of money and time to prove the case. Having proved the case you are then faced with the difficulty of making sure you handle the procedure properly. Assuming you have done that, there is always some uncertainty as to whether it is the first offence, the second offence, or the tenth offence. Irrespective of whether that is the first time the person has been caught or not.

It bugs me that shoplifters, people pinching stuff from their employers can keep on doing that, knowing they might be caught some time in the future and the first time they get caught all they get is their hand smacked. I think any crime should be prosecuted and this lenient way of giving people the first opportunity should not be handed out the way it is at the moment. I am speaking from experience as an employer.

In summary, it is clear that panels must involve victims in the process of diversion, and acknowledge their concerns. It would also be good if victims had input into the divertees' programmes.

J Police and Pacific Island community relations

The police, and community leaders both recognised strong co-operation between them would be needed if community panels were to work. Some leaders, such as Tapaeru Tereora,⁸⁴ felt the police had more work to do in going out into the Pacific Island communities. Education of the communities as a whole, rather than just a few panellists, as to the philosophy and practice of diversion and the community panels was one way the police could reach people.

Alfred Hunkin⁸⁵ said that some credit and support must be given to the police because they have been determined to bridge the huge gap that used to be between them and the Pacific Island communities. He said:

For the last seven or eight years, I have given training to Samoan police officers who want get back into their language and culture. A number of Pacific Islanders including me have also provided training in cross-cultural communication to Palagi police officers, right up to senior officer level. So from that point of view the police have been very conscious of the need to bridge the gap. This move for community panels in a way comes as an additional measure on their part to meet the needs of the community and I support it.

⁸⁴ See n 67.

⁸⁵ See n 38.

V LAWYERS' VIEWS

The three lawyers interviewed generally favoured the effects of the diversion scheme and welcomed the idea of community panels. However, they were concerned that panels did not give more onerous penalties than those from a court, or from a police diversion co-ordinator.

Wellington lawyer Ramona Rasch,⁸⁶ a Samoan, said that in her experience most people who were given diversion did not offend again and that could be due to a number of factors including that the people had simply made a mistake and were inherently unlikely to offend again, the shock of having a court appearance, or that they had benefited from the diversion programme they completed. Thus it was not clear whether the panel would have any additional effect, since the divertee was unlikely to reoffend anyway. It was offenders who came to notice and continued to come to offend, who needed help and community support.

It was important that offenders were informed so that they appreciated the difference in going through the police co-ordinator for a programme, or having a panel making them a programme.

She said that in all fairness, the panels' programmes had to be compatible with the way the police dealt with divertees.

The effectiveness of community panels with a depth of knowledge of an offender's culture would be greatest for offenders from a strong family base and community and church environment. She said:

⁸⁶ From interview on June 10, 1996.

The benefit of a peer panel is that it can say to offenders, "Do you know there were other things available to you? The whole process is dealt with by us, and not the courts." It is more the talking to by people who you hope would reinforce because of their positions, status, for that first offender, the seriousness of it all.

Whitireia Law Centre⁸⁷ lawyer Bill Bevan⁸⁸ also feared inconsistency from panelists who were unaware of the sentence an offender might get in court. Selection of the panellists should take this into account. He said:

Panellists need some knowledge of what potential penalties a person would face if they did not choose diversion. You don't want a situation where the person gets a worse punishment than if they went before a judge. You are going to need people with some knowledge of the legal consequences. It may be training, court system, the police themselves. Age and maturity would not go amiss.

Mark Graham,⁸⁹ also of Whitireia Law Centre, said one issue was whether the victim would not only have a say in whether a person was diverted, but also whether the offender could go to a panel instead of through a police programme.

Both men felt that restorative justice meant there had to be some provision for victim involvement on the community panel.

Unlike Pacific Island community leaders and police who stressed confidentiality of divertees, Mr Bevan felt that divertees, their offences, and the diversion programmes, should not be confidential. He stated:

Is it an issue? If they went to court for the first appearance it becomes public knowledge, and there is publicity and accountability. I do not see why if they are offered diversion they should be guaranteed confidentiality. What you get from diversion is a second chance not to get a criminal record. To get complete suppression, is going too far. What if the person offends somewhere else, how do you know? It is an important part of punishment that people get to know who they are living with, who is in the community.

⁸⁷ In Porirua, Wellington.

⁸⁸ See n 26.

⁸⁹ See n 26.

Mr Bevan suggested that the community could be involved in setting guidelines as to when a person should be diverted, but he felt that police might not favour this. He said:

I get the feeling the police don't want to be told by lawyers about diversion. They want that to come from them, and they will consider it. When you ring up and make enquiries, it is very much, "When we come across the file, we will look at that, we will see." I don't think diversion is working as well as it should at the actual decision stage.

Mr Graham said police diversion guidelines had to be kept flexible so that exceptional situations could be dealt with. He said:

The problem with guidelines is that as with the domestic violence case if you say domestic violence will not be diverted full stop, then when a situation comes up where the wife calls the police, and then gets done for assault. The problem with the guidelines is that if you rule out a lot of defences, there will be situations where diversion would be appropriate.

VI CONCLUSION

Community panels allow cultural input and extend the pool of knowledge of available community contacts so if properly run, they would be a welcome extension to the existing police diversion schemes in the Wellington area. The following recommendations for panels draw mainly on interviewees' suggestions:

a) Sufficient time for wide consultation of police with groups in the geographical location of the panels and identification of people with the mandate of their communities and wide networks.

* A series of consultations involving police and all sectors of an ethnic community before the community puts forward representatives.

b) Work by the police including educative meetings in the communities to explain diversion and the panels.

* Police meetings with communities to explain diversion and how panels will run.

- * Police help for training groups who wish to form community panels.
- c) For groups offering themselves to police as community panels, a clearly stated philosophy as to the objectives, commitment required, and time frames of the panel.
- * A clear project proposal by each panel including objectives and target divertees.
 - * At least one Maori community panel comprising representatives of local Wellington and outside iwi.
 - * A pool of about 30 representatives from the different Pacific Island groups, with one chairperson responsible for selecting five people per hearing for cases. A mix of elders, and New Zealand-educated panelists, with fair representation by women.
 - * Payment for panelists for time at hearings, travel, case preparation, and supervision of divertees. Payment for community groups taking divertees.
 - * Time limits to be placed on hearings, and also length of service for the panelists so that panelists are clear about the commitment required from them.
- d) Examination of how best to cater for victims' needs, especially in cross-cultural situations, so that diversion is truly a form of restorative justice.
- * Briefing victims in advance of the diversion hearing process and encouraging them to bring support people and to attend the hearing.
 - * Victim input into the date and time of hearings and the programme divertees are given. Translators for victims if necessary.
- e) Training for panellists.
- * Broad basic training about the police diversion scheme.
 - * Clear guidelines on confidentiality, the scope of panellists' power and lines of authority within the panel.
- f) Enough initial resources so that the scheme does not experience a shortfall, as Hoani Waititi Marae has, and planning for sponsorship for the duration of the project.

* Flexible initial funding for one year if the CPU is to fund the Wellington schemes and clear identification in groups' project proposals of sufficient sponsorship and funding to sustain them.

g) Clear guidance from the police on the severity of penalties, the scope diversion programmes may take, and how closely panels will be monitored by police.

* Guidelines from police on likely court sentences for similar offenders, and on maximum allowable penalties from panels.

* Police attendance at hearings, and record-keeping of cases.

Bibliography

Interviews

Police

1. Sergeant Paddy Darroch, Diversions Co-ordinator, Wellington, March 7, 1996.
2. Senior Constable George Ulyate, Diversions Co-ordinator, Porirua, June 20, 1996.
3. Chief Inspector John Crookston, Police legal advisor, Police National Headquarters, March 25, 1996.
4. Inspector John Wills, currently on secondment to Ministry of Justice Strategic Responses to Crime Group, June 19, 1996.

Community

1. Jean Nagy, Wellington Victim Support Acting Co-ordinator, March 8, 1996.
2. Sila Taupe, Porirua Tokelauan community elder, March 20, 1996.
3. Nive Venning, Tokelauan community worker and Hutt Valley Parents as First Teachers co-ordinator, March 22, 1996.
4. Ramona Rasch, Wellington lawyer, June 10, 1996.
5. Sarah Wylie, Research Analyst, Crime Prevention Unit, June 10, 1996.
6. Galumalemana Alfred Hunkin, Lecturer in Samoan Studies, Victoria University, June 10, 1996.
7. Ana Koloto, Lecturer in Pacific Island Education, Victoria University, June 11, 1996.
8. Cherlynn Sikoti-Naik, chairperson Wellington Multi-Cultural Educational Resource Centre, June 12, 1996.
9. Tapaeru Tereora, Senior Development Officer, Operations Centre, Ministry of Pacific Island Affairs, Porirua, June 12, 1996.
10. Bill Bevan, lawyer, Whitireia Law Centre, Porirua, June 13, 1996.
11. Mark Graham, lawyer, Whitireia Law Centre, Porirua, June 13, 1996.
12. Steven Lau, then president of the Wellington Chinese Association Inc, June 14, 1996.
13. Bernard Jervis, Manager Community Corrections, Department of Corrections, June 14, 1996.
14. Sianaua Ostler, Acting Manager of the Pacific Island Unit, Department of Social Welfare, June 14, 1996.
15. Jean Mitaera, Senior Policy Analyst, Ministry of Women's Affairs, June 17, 1996.
16. Bill Kaua, Community Liaison Officer, CPU, June 17, 1996.
17. Tapa Tailiki, Administrative Services, SAU, June 18, 1996.
18. Katerina Letoa, counsellor, SAU, June 18, 1996.
19. Sai Lealea, Wellington Fijian community leader, member of Pacific Island Advisory Group for Ministry of Justice, June 18, 1996.
20. Lea'ula Sa'u, community liaison co-ordinator, Department of Corrections, June 19, 1996.

21. Gavin Mickell, chair of the Wellington Resource Panel, June 21, 1996.
22. Judge Neville Jaine, District Court Judge, Wellington, June 27, 1996.
[REDACTED]
- 24 Logan Rupuha, Manawhakahaere Te Whanau Awhina, Hoani Waititi Marae, August 7, 1996.(telephone interview)

Reports

1. "Adult Pre-trial Diversion in New Zealand", Warren Young and Neil Cameron. Young and Cameron Policy and Research Consultants, Wellington 1991.
2. "Diversion," Police Enforcement Prosecution and Sentencing Working Group, July 1994.
3. "National Guidelines for police adult pre-trial diversion scheme," John Crookston, September 27, 1996.
4. "The New Zealand Crime Prevention Strategy," Crime Prevention Unit, October, 1994.
5. "The Police Adult Diversion Scheme - Trends in the use of diversion 1992 to 1994 Wellington Central and Manukau Districts and Beyond," Christine Laven, January, 1996.
6. "The Crime Prevention Unit - a fact sheet," CPU, April, 1996.
7. Record of Ministry of Justice Meeting on restorative Justice with Tokelauans, Ministry of Justice, June 8, 1996.
8. Te Whanau Awhina Project Proposal, Hoani Waititi Marae, 1996.

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