**Argumentative Writing**

*Should Cole be allowed to return to the island to complete his sentence?*

You are a member of the sentencing circle that must make a decision on Cole’s returning to the island to complete his sentence. Using the articles on banishment (attached), Circle Justice, and the flashbacks to the sentencing circle in Chapters 4-6, make a claim to the rest of the circle members as to whether Cole should or should not be able to return to the island to finish out his sentence.

**Things to Consider:**

The purpose of the circle sentencing and the banishment- did Cole fulfill his role?

The lessons Cole learned while there (has he changed at all?)

 Peter’s suffering

 Alternative sentencing (jail) -Will this be a better alternative?

**Pre-Writing**

**Directions:** Circle your position—in favor or against. Then complete the pre-writing outline below.

**Arguments IN FAVOR or AGAINST Cole returning to the island to complete his sentencing**

**1. COUNTERARGUMENT:**

 **Reason 1 (Rebuttal):**

**Evidence:**

**Explanation:**

**2. REASON 2:**

**Evidence:**

**Explanation:**

**3. REASON 3:**

**Evidence:**

**Explanation:**

**ARTICLE ONE**

What Is Circle Justice?

Through traditional Native American methods it encourages the offender and the community to accept responsibility and acknowledges the harm they have done to society and to victims.

Circle Justice is a Native American form of justice that seeks healing in contrary to the regular punishment ways and is portrayed in Ben Mikaelsen's novel *Touching Spirit Bear*.

It is mostly practiced in Minnesota and some other mid-western states. Volunteers help sentence offenders and then help them lead better lives.

**What is Circle Justice?**
Circle Justice sentencing is a result of the efforts of a growing number of judges to counteract the futility of the current sentencing process and to respect in Native communities the traditional aboriginal method of dealing with members of the community who broke the law. It is one of the most promising breakthroughs in our western justice system because it can provide for a community-based, pre-sentence advisory process that presents a healthy opportunity for emotional expression of grieving, anger and support, and has a strong focus on accountability, reparation and restoration of peaceful and just relations in the community. It can also have a wider impact on crime prevention because of the number of people it involves in taking responsibility for solving the problems that surface. It is not without its dangers and limitations, however. The potential abuses from power imbalances in the formal and informal relations between members of the community must be watched for all the more carefully in a process that can give the illusion of reassurance that highly democratic principles of participatory decision-making are being respected. Interest is growing in learning from this process what can be adapted for use in urban, non-aboriginal communities. While the goal of circle sentencing is not to keep offenders out of jail that is still often the outcome when the process of sentencing in a way that makes sense and is taken seriously by the judge and the community

**Sentencing Circle: a General Overview and Guidelines: Introduction**
The sentencing circle is a method of dealing with members of the community that have broken the law. A sentencing circle is conducted after the individual has been in the present western justice system and found guilty or if the accused has accepted guilt and is willing to assume their responsibility. This sentencing method encourages the offender and the community to accept responsibility and acknowledges the harm they have done to society and to victims.

A sentencing circle's aim is to shift the process of sentencing from punishment to rehabilitation and responsibility. It provides a new alternative for courts to incarceration. The sentencing circle proves an opportunity to start the healing process for both the offender and the victim. The offender is presented with the impact of their actions in front of respected community members, elders, peers, family, the victim and their family, stimulating an opportunity for real change.

**When to Hold a Sentencing Circle**
The criteria come from a decision from Judge Fafard of the Saskatchewan Provincial Court [R. v. Joseyounen [1995] W.W.R. 438 at 442-46 or Ross Green's Justice in Aboriginal Communities at page 76.]:

1 The accused must agree to be referred to the sentencing circle.

2 The accused must have deep roots in the community in which the sentencing is held and from which the participants are drawn.

3 There are elders or respected non-political community leaders willing to participate.

4 The victim is willing to participate and has been subjected to no coercion or pressure in so agreeing.

5 The court should try to determine beforehand, as best it can, if the victim is subject to battered women's syndrome. If she is, then she should have counseling and be accompanied by a support team in the circle.

6 Disputed facts have been resolved in advance.

7 The case is one, which a court would be willing to take a calculated risk and depart from the usual range of sentencing.

**Rules Governing a Sentencing Circle**
• There are so special powers or privileges for anyone in the circle.

• There are no interruptions while a person is speaking. In a sentencing circle a person may only speak in turn. The laws of the Creator shall govern the person speaking. Those laws are honesty, sharing, kindness, and respect.

• In the circle decisions are made on the basis of consensus.

• At all times during the proceedings of a sentencing circle the Chairperson will maintain the order and the process of the circle.

**Sentencing Circle Exclusions**
For purely punitive sanctions or where a tern of incarceration in excess of two years is realistic, the sentencing circle is not appropriate. The circle is not appropriate where:

• There have been frequent repeat offenses or the offence is indictable.

• The attitude of the offender prohibits his/her involvement.

• There are no community sentencing options available to the circle.

• The community is not prepared to be involved in the circle.

**Sentencing Circle Involvement and Requirements**
The judge, lawyer, police should be:

• Willing and able to participate;

• The decision as to whether a sentencing circle will be granted is the judge's alone but must take into consideration all the criteria as to whether or not to grant a sentencing circle and whether the court is prepared to take a calculated risk with respect to the offender.

• After the circle has reached a consensus as to the sentence for the offender, the judge then steps back into his judicial role and may choose to impose or reject the sentence that the circle has recommended. However, the sentence is rarely rejected by the judge.

**The Community should be:**
• Be willing and able to participate and provide follow-up.

• Totally supportive of the process and be familiar with the proceedings.

• Feel free to ask questions, express their opinions as their views are important and more valid than those of people from outside the community but people should refrain from counseling the offender or talking in excess.

• Be involved in ongoing supervision, re-integration of the offender into the community and evaluation of the offender's progress on a regular basis.

• Be willing to organize the circle and provide translation services if necessary (anyone can organize a circle i.e. probation officer, social work[er], First Nation Justice Committee member, Band Councilor or an Elder).

• Be willing and able to mobilize community resources so as to assist the offender and his/her family in the process of rehabilitation and recovery if necessary; welcome the participants, if possible provide coffee, milk, Kleenex, lunch and transportation for the Elders if needed.

**The offender should be:**
• Willing to participate and accept responsibility for his/her actions.

• Willing to face his/her victims and make whatever amends may be necessary.

• Willing to participate in traditional or Christian ceremonies to initiate the healing process.

• Willing to spend time with an Elder and participate in any preparations the Elder recommends at his/her home reserve or his/her choice.

• Willing to make whatever legal amends necessary to the victim and do whatever is necessary to the victim to reconcile the negative relationship created between themselves, the victim and the community as a result of the offense.

**The victim should be:**
• involved in the sentencing circle process directly or through the aid of a representative or surrogate victim (when that is realistic).

• Given as much consideration and respect as possible in recognizing compensation and/or restitution for the victim or a community service agency of the victim's choice.

• Willing to become involved with the community in some way to facilitate the healing of the offender.

**Sentencing Options Available to Sentencing Circles:**
• peer counseling;

• restitution/compensation, i.e. replace broken window;

• community service work;

• mediation;

• compulsory school attendance/work attendance;

• referral to specialized programs, i.e. anger management, sexual abuse awareness training;

• referral to counseling and/or treatment;

• Aboriginal spiritual activities, i.e. sweats, forgiveness/sacrifice ceremonies;

• Aboriginal cultural activities, i.e. pow wow security, Elders assistant, cleaning grounds, ration distribution;

**ARTICLE 2**

Banishment/Custody

Every society must have ways of protecting its members from dangerous people. One of the purposes of custody is to keep people who are a danger to others away from others. When custody is used for this purpose alone society is only safer while the person is in custody. For this reason custody is also intended to serve other purposes. It is meant to deter the person and others from committing crimes. It is meant to show society’s disapproval of the actions of the offender. It is also meant to help people change so that they are not as likely to go back to a life of crime. This can be done in a number of ways including drug or alcohol counseling, anger management or skills training.

The purposes of custody for youth include protecting society and holding youth accountable for their actions, as well as helping youth to turn their lives around. Deterring other people from committing crimes is not a purpose for sentencing a youth under the *Youth Criminal Justice Act*. That leaves holding youth accountable and rehabilitating youth as purposes for sentencing a youth to custody. How effective custody is in rehabilitating offenders, particularly young ones, is the subject of much debate. Some people argue that when a youth is placed in custody the youth is likely to be negatively influenced by other youths who may be more involved in crime. As well a youth may get a reputation in the community that could lead the youth to continue to associate with others who are involved in crime. Others argue that custody is the only way to properly hold a youth who has committed a serious crime accountable and that a youth can receive rehabilitative programming while in custody.

In traditional Aboriginal communities banishment served some of the same purposes as custody. Society was protected because the individual was removed from the society. Banishment can also provide for rehabilitation and hold the person accountable for their actions. The Saskatchewan Court of Appeal has said that the central features of banishment are things like the self-discipline, self-treatment, introspection and self-examination of one’s goals designed to make the person a better person. The Court also noted that banishment is also a form of punishment because of the deprivation involved.