

13TH SOUTH PACIFIC JUDICIAL CONFERENCE

28 JUNE - 2 JULY 1999, APIA SAMOA

JUDICIAL EDUCATION

As an Agent of Leadership and Change

Some Lessons from Common and Civil Law Experience

*"Good judges can be made,
but they make themselves through learning,
rather than being taught."*

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13th South Pacific Judicial Conference

Apia, Samoa

June 28 – July 2, 1999

For their 13th get-together, delegates to the South Pacific Judicial Conference convened in Apia, Samoa, where the whole thing started 27 years earlier, in 1972. Many more topics were on the agenda this time, and there were many more participants. But again, participants returned to some key issues that had come up before.

Judicial education was the focus of several of the presentations and discussions, as the Pacific Judicial Education Program (PJEP) was getting underway. PJEP, a five year program, funded primarily by Australia, that had been approved two years earlier at the Judicial Conference in Sydney. The judges present listened as Mr. Livingston Armytage, Australian consultant in judicial and legal development, discussed effective judicial training, and made a few generalizations about them as learners.

Judges, he said, are educated professionals and as learners, they are self-directed. They have an intensely short-term problem orientation, and tend to have highly focused problems. They know what they need to learn, and want it to be immediately useful. The more sharply the potential learner has managed to define the problem, the less satisfactory traditional classes will be. Judges, he continued, pursue competence for its own sake rather than for promotion or material gain. "Good judges," he said, "can be made, but they make themselves through learning, rather than through being taught."

The credibility of any education process for judges, therefore, depends on the ability of the education provider to preserve judicial independence from any risk of seeming like indoctrination, whether actual or apparent. Effective training should promote the development of the distinctive skills of judging, and reflection on attitudes relating to fair trials and equality before the law (the “how”) as well as substantive law and procedure (the “what”).

The needs for judicial training throughout the Pacific region are profound, widespread, and diverse, declared Mr. Armytage. The judiciary needs to be strengthened in exercising its role as guardian of the principles of good governance, accountability and transparency. The court’s role is to protect the citizen from political oppression, commercial exploitation and the abuse of fundamental human rights, including violence against women. Ultimately, strengthening the rule of law, he continued, promotes economic development by protecting financial investment and trade.

Furthermore, he said, “There are no shortcuts to addressing the fundamental deficits in the professional competence of lay justices, magistrates, court officers, and para-legals.”

He listed the three primary areas where legal education and professional training for lay magistrates and judges is needed:

- Legal knowledge and concepts (law, evidence, jurisdictions, legal literacy, customary law, etc)
- Judicial outlook, attitude, and values (role, powers, responsibilities, independence, impartiality, integrity, review, conduct and ethics)
- Judicial skills (how to conduct a hearing trial, control of the courtroom, note-taking, legal research, statutory interpretation, judgment writing, communication skills, time management, and case management).

Education for court officers and para-legals should include:

- Legal knowledge and concepts (legal literacy, court system and method, court procedures)
- Legal interpretation
- Judicial administration skills (case management, administering courts and filings, fixtures, hearing lists and queuing, record management, registry management and practice, and teamwork)
- Generic management and administrative skills (written and oral communication, client service, and office management).

Judicial officers themselves, most of whom have a law degree (although the extent of professional training and experience varies throughout the region), need continuing education in case management, team leadership, coaching and mentoring, judicial information technology and computer skills, judicial information systems, human rights and gender equity, managing complex litigation and commercial disputes, evidentiary issues, major fraud, and customary law.

Expatriate judicial officers also need local induction training on law, custom, and culture, as well as coaching and mentoring. Good lawyers, he noted, don't necessarily become good judges. Going from adversary to adjudicator means changing ones attitude, learning and using new skills, and sometimes severing old ties.

In addition, he added, there are generic needs of the judicial service, including education in operation and use of judicial information systems, computer training in word-processing and electronic legal research methods, and training in court recording.

The need is there, he said. He enumerated what he considered the guiding principles that would make a judicial training program for the Pacific effective:

- **Judicial ownership** — a good program must be judge-led and court-owned.
- **Bench-specific, with a national focus and decentralized delivery** — it should be designed to meet specific local needs, although some training should be conducted on a regional basis to provide opportunities to network and share experiences.
- **Capacity building** — the goal should be to build regional commitment and capacity to deliver sustainable judicial training, rather than create a system which is donor driven or dependent on outside expertise.
- **Sustaining incremental medium-term change** — in order to consolidate a sustainable foundation of judicial expertise, the focus of a good program should be medium-term incremental development, avoiding “quick fixes”
- **Resource utilization and coordination** — the program should use existing resources within the region when available
- **Bottom-up priority** — the program should aim first to develop the basic legal knowledge, practical judicial skills, and judicial outlook

- Consolidate judicial identity — the program should address specific and local needs of judges, magistrates, and court administrators.

Armytage submitted a proposal for a detailed work plan for short-term activities for each year from 1999-2004. He also had a list of specific recommendations for the South Pacific Judicial Commission:

- Assume ongoing responsibility for overseeing the development of regional judicial training program
- Constitute a council of judicial education to make policy, set priorities, and oversee management of the program of judicial training. Appoint a chief judicial officer to chair the Council of Judicial Education
- Establish an Executive Committee of the Council of Judicial Education to oversee the day-to-day operation of the secretariat
- Convene the Council of Judicial Education annually, and Executive Committee at least quarterly
- Establish and staff a Pacific judicial training secretariat, and incorporate it as an NGO (non-governmental organization)
- Enter into a memorandum of understanding – or affiliation agreement – with Institute of Justice and Applied Legal Studies, of the University of the South Pacific
- Invite the University of the South Pacific to develop curricula and courseware
- Adopt the Guiding Principles (above)
- Advocate to appointing authorities throughout the region the establishment of a minimum standard for eligibility to judicial office

And finally, he had a very important and specific recommendation for each of the chief judicial officers of the Pacific Island nations: lobby each government for endorsement of the need to allocate 1.5% of each national law and justice budget for judicial training.

The need for legal protection of cultural artistic works and folklore was the topic for The Honorable John von Doussa, Justice of the Federal Court of Australia and the Court of Appeal for Vanuatu. He talked of the need for intellectual property rights in preserving to indigenous people the communal powers of control and exclusive use of the cultural knowledge, material and resources which their laws and customs recognize. He warned that increasingly, the cultural heritage of indigenous people is being commercially exploited by others without adequate recognition or compensation. In his talk, he traced how claims by Aboriginal people under the Australian legal system have fared. A similar note was struck by Professor Margret Wilson, Acting Dean of the School of Law at the University of Waikato, in New Zealand, who delivered an address entitled "Cultural Rights — An Issue for Consideration by the Courts."

Other topics at this 13th Conference included: a presentation by the Honorable Justice Bryan Beaumont, of the Federal Court of Australia, entitled "The Self-Administered Court," in which he traced the development of the Federal Court of Australia from its origin to the self-administered, autonomous court it has been since 1990; "The Judge as Lawmaker — a Samoan Perspective" from the Honorable Tiava'asu'e Falefatu Maka Sapolu, Chief Justice of Samoa; "Illegal Fishing and Enforcement of Fishery

Legislations, The Guam Experience,” from the Honorable John S. Unpingco, District Court of Guam.

There was also a session on sentencing principles in criminal cases, and another on proof in criminal cases, and as at most other conferences, there was a panel discussion on judicial independence and impartiality.

The group would not meet again until late September of 2001, just weeks after the events of September 11th, and the emergence of a new terrorism onto the world stage, would present new questions to the role of the judiciary in establishing and sustaining the rule of law.